

2013-2014

**SENATE
INSURANCE**

MINUTES

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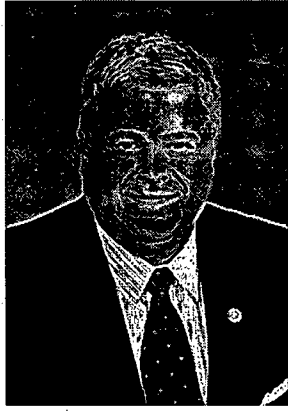
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INSURANCE SENATE COMMITTEE

2013 - 2014



Tom Apodaca
Co-Chair



Wesley Meredith
Co-Chair



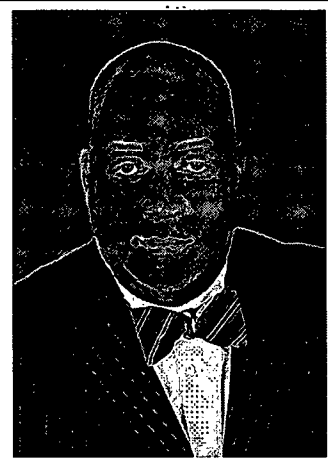
Norman Sanderson
Vice-Chair



Austin Allran



Jim Davis



Joel D. M. Ford



Rick Gunn



Ralph Hise



Floyd McKissick



Gene McLaurin



Bob Rucho



Michael Walters

2013-2014 Biennium
Leg. Day: H-98/S-98

Date: 07/18/2013
Time: 9:46:06 AM

Bill	Introducer	Short Title		Latest Action	Date In	Date Out
H 170	Brawley	Dept. of Insurance/Public Health Service Act.	*S	Ref To Com On Insurance	03/28/2013	
H 240	Dockham	Insurance Technical/Clarifying Changes.-AB	*R	Ch. SL 2013-199	04/16/2013	06/06/2013
H 247	Burr	Freedom to Negotiate Health Care Rates.	*R	Ch. SL 2013-46	04/01/2013	04/24/2013
H 340	Dockham	Limited Lines Travel Insurance.	*H	Pres. To Gov. 7/11/2013	04/29/2013	06/06/2013
H 473	Dockham	NC Captive Insurance Act.	*R	Ch. SL 2013-116	05/16/2013	06/05/2013
H 498	McGrady	Autism Health Insurance Coverage.	*S	Ref To Com On Insurance	05/16/2013	
H 519	Tine	Property Insurance Rate-Making Reform.	*S	Ref To Com On Insurance	05/15/2013	
H 639	Brawley	WC Ins. Cancellation/Elec. Communications.	*S	Ref To Com On Insurance	05/16/2013	
H 649	Collins	Small Group Health Ins. Technical Changes.	*H	Pres. To Gov. 7/16/2013	05/20/2013	06/06/2013
H 650	Collins	Guaranty Association Act Amendments.	R	Ch. SL 2013-136	05/02/2013	06/06/2013
H 730	Schaffer	Insurance & Health Care Conscience Protection.	*S	Ref To Com On Insurance	05/20/2013	
H 793	Saine	HOAs/Fidelity Bonds.	*S	Re-ref Com On Insurance	06/04/2013	
S 4	Apodaca	No N.C. Exchange/No Medicaid Expansion.	*R	Ch. SL 2013-5	01/31/2013	01/31/2013
S 154	Meredith	Automobile Insurance Regulatory Modernization.	S	Re-ref Com On Rules and Operations of the Senate	03/04/2013	04/10/2013
S 180	Apodaca	Auto Insurance/Allow Optional Enhancements.	*H	Assigned To Commerce and Job Development Subcommittee on Energy and Emerging Markets	03/06/2013	04/17/2013
S 181	Apodaca	Auto Insurance/Young Driver Classification.	*H	Assigned To Commerce and Job Development Subcommittee on Energy and Emerging Markets	03/06/2013	04/17/2013
S 248	Hartsell	Choice of Hearing Aid Specialist.	*S	Pres. To Gov. 07/12/2013	05/15/2013	06/06/2013
S 359	Meredith	Freedom to Negotiate Health Care Rates.	S	Ref To Com On Insurance	03/20/2013	
S 468	Jenkins	Align Inspections W/Installer Licensing.	*R	Ch. SL 2013-160	05/14/2013	05/15/2013

'\$' indicates the bill is an appropriations bill.

A bold line indicates that the bill is an appropriations bill.

'*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill

Through Senate Committee on
Insurance

S 475	Meredith	PEO Act Amendments.	*H	Ref To Com On Insurance	03/28/2013	05/15/2013
S 476	Meredith	NC Captive Insurance Act.	*H	Ref to the Com on Commerce and Job Development, if favorable, Finance	03/28/2013	04/18/2013
S 477	Meredith	No Set Fee/Noncovered Vision Services.	*H	Ref To Com On Insurance	03/28/2013	05/14/2013
S 481	Apodaca	Dept. of Insurance/Public Health Service Act.	S	Ref To Com On Insurance	03/28/2013	
S 496	Apodaca	SHP/Premiums for Alternative Coverage Options.	S	Ref To Com On Insurance	03/28/2013	
S 498	Daniel	Modify Religious Employer Exception.	S	Ref To Com On Insurance	03/28/2013	
S 531	Daniel	State Employees Health Savings Account Option.	S	Ref To Com On Insurance	04/01/2013	
S 556	Hise	Wind Up High Risk Health Insurance Pool.	*S	Re-ref Com On Appropriations/Base Budget	04/01/2013	05/15/2013
S 560	Hise	Insurance Premium Assistance for Pregnancy.	S	Ref To Com On Insurance	04/01/2013	
S 561	Hise	Chiropractor Co-Pay Parity.	S	Ref To Com On Insurance	04/01/2013	
S 600	Apodaca	State Health Plan/Statutory Correction.	S	Ref To Com On Insurance	04/03/2013	
S 614	Brown	WC/Cancellation Procedure Changes.	*H	Re-ref Com On Commerce and Job Development	04/03/2013	05/15/2013
S 615	Brown	Property Insurance Fairness.	S	Ref To Com On Insurance	04/03/2013	
S 644	Hartsell	Prohibit Insurance Co. Fixing Optometry Fees.	S	Ref To Com On Insurance	04/03/2013	
S 690	Sanderson	Property Insurance Rate-Making Reform.	S	Ref To Com On Insurance	04/03/2013	

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Senate Committee on Insurance
Thursday, January 31, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 4	No N.C. Exchange/No Medicaid Expansion.	Senator Brown Senator Rucho Senator Apodaca

Senate Committee on Insurance
Thursday, January 31, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Insurance met at 10:00 AM on January 31, 2013 in Room 1027/1128 of the Legislative Building. 12 members were present.

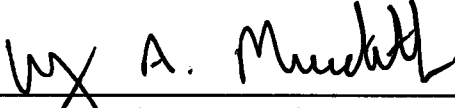
Senator Wesley A. Meredith was the Presiding Chair

S. B. 4 No NC Exchange/ No Medicaid Expansion

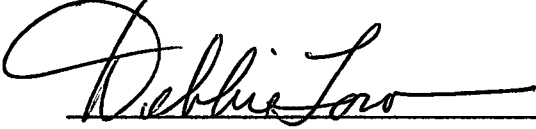
This bill had a proposed committee substitute (PCS). Senator Gunn moved to accept the PCS for discussion and Senator Sanderson seconded the motion. The bill reserves for the General Assembly the authority to determine any interaction with the federally facilitated Health Benefit Exchange as well as to determine whether or not to expand the State's Medicaid eligibility criteria under the Affordable Care Act (ACA). The bill also repeals previous law to the contrary. The bill requires the Department of Insurance to cease expenditures funded by exchange –related federal grants. Finally, the bill directs the Department of Health and Human Services to expand NC Fast technology to provide Medicaid eligibility determinations for the federally facilitated exchange. Senator Apodaca introduced SB 4 and Amy Jo Johnson, an attorney from the Research Division, explained the bill: the bill reserves for the General Assembly the authority to determine any interaction with the federally facilitated Health Benefit Exchange as well as to determine whether or not to expand the State's Medicaid eligibility criteria under the Affordable Care Act (ACA). The bill also repeals previous law to the contrary. The bill requires the Department of Insurance to cease expenditures funded by exchange-related federal grants. Finally, the bill directs the Department of Health and Human Services to expand NC FAST technology to provide Medicaid eligibility determinations for the federally facilitated exchange. Ms. Johnson also gave the background and bill analysis on the sections: Health Benefits Exchange, NC FAST and Medicaid Expansion.

Senator Hise moved: UNFAVORABLE TO THE BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL.

The meeting adjourned at 10:40 AM.



Senator Wesley A. Meredith Co-Chair



Debbie Lown, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

SENATE INSURANCE COMMITTEE REPORT

**Senator Tom Apodaca, Co-Chair
Senator Wesley Meredith, Co-Chair**

Thursday, January 31, 2013

Senator APODACA,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

SB 4

No N.C. Exchange/No Medicaid Expansion.

Draft Number: S4-PCS35022-ME-1

Sequential Referral: None

Recommended Referral: None

Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Apodaca, Tom will handle SB 4



*** C M R 3 - V - 1 ***

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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**SENATE BILL 4*
PROPOSED COMMITTEE SUBSTITUTE S4-PCS35022-ME-1**

Short Title: No N.C. Exchange/No Medicaid Expansion.

(Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT (1) TO CLARIFY THE STATE'S INTENT NOT TO OPERATE A STATE-RUN OR "PARTNERSHIP" HEALTH BENEFIT EXCHANGE, (2) TO PROVIDE THAT FUTURE MEDICAID ELIGIBILITY DETERMINATIONS WILL BE MADE BY THE STATE RATHER THAN THE FEDERALLY FACILITATED EXCHANGE, AND (3) TO REJECT THE AFFORDABLE CARE ACT'S OPTIONAL MEDICAID EXPANSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 23.3 of S.L. 2011-145, created by Section 49 of S.L. 2011-391, is repealed.

SECTION 1.(b) G.S. 58-2-40(10) is repealed.

SECTION 1.(c) The General Assembly reserves the authority to define the State's level of interaction, if any, with the federally facilitated Health Benefit Exchange that will operate in the State. No department, agency, or institution of this State shall enter into any contracts or commit any resources for the provision of any services related to the federally facilitated Health Benefit Exchange under a "Partnership" Exchange model, except as authorized by the General Assembly. No department, agency, or institution of this State shall take any actions not authorized by the General Assembly toward the formation of a State-run Health Benefit Exchange. It is not the intent of this section to prohibit State-federal interaction that does not pursue a State-run Exchange or "Partnership" Exchange model.

SECTION 1.(d) The Department of Insurance and Department of Health and Human Services shall cease all expenditures funded by the following Exchange-related grants from the federal government: (i) Exchange Planning Grant and (ii) Level One Cooperative Agreement Establishment Grant. Any contract between a third party and the State to provide services funded by such grants is hereby terminated on the grounds that funding no longer exists. The Departments shall review all grant-related expenditures that preceded the effective date of this act and shall draw down grant funds sufficient to reimburse the State for any unpaid expenditures allowed under the grants. The Department of Insurance shall notify the Secretary of United States Department of Health and Human Services that the State will no longer be drawing down Exchange-related grant funds. It is not the intent of this section to impact any grant funding for premium review.

SECTION 2. The Department of Health and Human Services shall ensure that the North Carolina Families Accessing Services through Technology (NC FAST) information technology system can provide Medicaid eligibility determinations for the federally facilitated

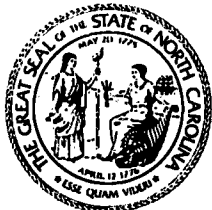


* S 4 - P C S 3 5 0 2 2 - M E - 1 *

1 Health Benefit Exchange that will operate in North Carolina and shall provide such
2 determinations for the Exchange.

3 **SECTION 3.** The State will not expand the State's Medicaid eligibility under the
4 Medicaid expansion provided in the Affordable Care Act, P.L. 111-148, as amended, for which
5 the enforcement was ruled unconstitutional by the U.S. Supreme Court in *National Federation*
6 *of Independent Business, et al. v. Sebelius, Secretary of Health and Human Services, et al.*, 132
7 S. Ct. 2566 (2012). No department, agency, or institution of this State shall attempt to expand
8 the Medicaid eligibility standards provided in S.L. 2011-145, as amended, or elsewhere in State
9 law, unless directed to do so by the General Assembly.

10 **SECTION 4.** This act is effective when it becomes law.



SENATE BILL 4: No N.C. Exchange/No Medicaid Expansion

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sens. Apodaca, Brown, Rucho
Analysis of: PCS of First Edition

Date: January 31, 2013
Prepared by: Amy Jo Johnson
Committee Counsel

SUMMARY: *The bill reserves for the General Assembly the authority to determine any interaction with the federally facilitated Health Benefit Exchange as well as to determine whether or not to expand the State's Medicaid eligibility criteria under the Affordable Care Act (ACA). The bill also repeals previous law to the contrary. The bill requires the Department of Insurance to cease expenditures funded by exchange-related federal grants. Finally, the bill directs the Department of Health and Human Services to expand NC FAST technology to provide Medicaid eligibility determinations for the federally facilitated exchange.*

Section 1: Health Benefits Exchange

BACKGROUND:

The federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by P.L. 111-152, (ACA), directs that states may set up health benefit exchanges for individuals and small businesses to purchase health insurance. Specifically, the ACA provides that "each State that elects...to apply the requirements described in [the ACA] shall, not later than January 1, 2014, adopt and have in effect (1) the Federal standards established under [the ACA]; or (2) a State law or regulation that the Secretary determines implements the standards within the State."

A state is not required to create its own exchange. If a state elects not to establish a state-based exchange, or if HHS determines that the state has not taken the actions necessary to establish an operational exchange by January 1, 2014, the ACA gives authority to the United States Department of Health and Human Services (HHS) to establish and operate an exchange within the state. Applications for a State-based exchange to operate in 2014 were due in December of 2012.

HHS has also given states the option of a "partnership" exchange. A "partnership" exchange model is a federally facilitated exchange (FFE) in which the federal government contracts with a state to perform certain administrative functions. A state may choose to contract with the federal government to perform administrative functions in one or both of the following areas: plan management and consumer assistance. As the Centers for Medicare and Medicaid Services (CMS) notes in its general guidance "States can choose to be responsible for the day-to-day management of the plan management and/or consumer assistance functions...however, HHS, by law, retains authority over each FFE." The deadline for a State to submit the application for the "partnership" exchange model is February 15, 2013.

BILL ANALYSIS:

- Reserves authority to the General Assembly to determine level of interaction with the federally facilitated health benefit exchange.
- Prohibits any department, agency, or institution of the State take actions towards the formation of a state-based exchange or to enter into any contracts or commit any resources to a "partnership" exchange model unless authorized by the General Assembly.
- Repeals language to the contrary in S.L. 2011-145 and repeals Commissioner of Insurance duties under Chapter 58 relating to the ACA.
- Directs the Department of Insurance to cease all expenditures funded by federal exchange-related grants. The Department is also directed to seek reimbursement for all expenditures preceding the effective date of this Act.



Section 2: NC FAST

BACKGROUND:

Under the ACA, individuals applying for insurance through the exchange to use premium tax credits are to be treated with a "no wrong door policy." This means, if an individual applies to the exchange, but is actually eligible for Medicaid that individual must be able to make a Medicaid application through the exchange. States can work with the FFE regarding Medicaid and CHIP eligibility determinations in one of two ways. The State may either establish an agreement whereby the FFE assesses applicants for Medicaid/CHIP eligibility and then transfers the applicants' accounts to the State Medicaid or CHIP agency to complete the eligibility determination or the State may elect to accept eligibility determinations completed by the FFE as final determinations. States that elect to accept final eligibility determinations made by the FFE must maintain that eligibility for one year.

North Carolina has been developing the North Carolina Families Accessing Services through Technology (NC FAST) information technology system to handle Medicaid eligibility determinations. In order to conduct Medicaid eligibility determinations for the Exchange, the system will need to be able to work with the federally facilitated exchange from a technical standpoint.

BILL ANALYSIS:

The North Carolina Department of Health and Human Services is directed to ensure that the NC FAST technology system will be able to provide Medicaid eligibility determinations for the FFE and directs that NC FAST will handle these determinations.

Section 3: Medicaid Expansion

BACKGROUND:

Under the ACA as originally enacted, States were required to expand their Medicaid programs to all individuals under 138% of the federal poverty level (the ACA reads 133% but with the 5% income disregard the practical result will be 138% FPL). After the ruling in *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566 (2012), the Supreme Court eliminated the enforcement mechanism (i.e., indicated that the federal government was not allowed to withhold its current Medicaid funding dollars if a State did not expand), essentially creating a voluntary expansion.

With that holding, States have two options:

- Keep the current State Medicaid agreement.
- Participate in the Medicaid expansion as outlined in ACA. The federal government will pay 100 percent of the newly eligible recipients in the first three years (2014-2016), and a declining percent match afterward with a final payment level of 90% in 2020. Under the expansion, States would be required to open eligibility to all people with household incomes up to 138 percent of the federal poverty level starting in January 2014. Anyone newly receiving Medicaid who would have been eligible *prior to the expansion* will **not** be considered a newly eligible and the federal government will **not** pay 100% for those individuals.

BILL ANALYSIS:

The bill specifies that the state will not participate in the Medicaid expansion. The bill indicates that no department, agency, or institution may attempt to expand the Medicaid eligibility criteria unless directed to do so by the General Assembly.

EFFECTIVE DATE: This act is effective when it becomes law.

**Ryan Blackledge substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

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SENATE BILL 4*

Short Title: No N.C. Exchange/No Medicaid Expansion. (Public)

Sponsors: Senators Apodaca, Brown, Rucho (Primary Sponsors); Allran, Barefoot, Bingham, Brock, Brunstetter, Cook, Curtis, Daniel, J. Davis, Goolsby, Gunn, Harrington, Hise, Hunt, Jackson, Meredith, Pate, Rabin, Rabon, Randleman, Sanderson, Soucek, Tillman, Tucker, and Wade.

Referred to: Insurance.

January 31, 2013

A BILL TO BE ENTITLED

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SECTION 1.(d) The Department of Insurance and Department of Health and Human Services shall cease all expenditures funded by the following Exchange-related grants from the federal government: (i) Exchange Planning Grant and (ii) Level One Cooperative Agreement Establishment Grant. Any contract between a third party and the State to provide services funded by such grants is hereby terminated on the grounds that funding no longer exists. The Departments shall review all grant-related expenditures that preceded the effective date of this act and shall draw down grant funds sufficient to reimburse the State for any unpaid expenditures allowed under the grants. The Department of Insurance shall notify the Secretary of United States Department of Health and Human Services that the State will no longer be drawing down Exchange-related grant funds. It is not the intent of this section to impact any grant funding for premium review.

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4 or not to expand the State's Medicaid eligibility under the Medicaid expansion provided in the
5 Affordable Care Act, P.L. 111-148, as amended, but for which the enforcement was ruled
6 unconstitutional by the U.S. Supreme Court in *National Federation of Independent Business, et*
7 *al. v. Sebelius, Secretary of Health and Human Services, et al.*, 132 S. Ct. 2566 (2012). No
8 department, agency, or institution of this State shall attempt to expand the Medicaid eligibility
9 standards provided in S.L. 2011-145, as amended, or elsewhere in State law, unless directed to
10 do so by the General Assembly.

11 **SECTION 4.** This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate INSURANCE Committee
Name of Committee

January 31, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Heather Barnett	Ward & Smith
John Thompson	CCWC
Angie Harris	Ward & Smith
Tom Louch	NCPA
David C Smith	NCAHL
Kyle Hall	Sen. Hunt's office
Christine Weason	American Cancer Society CANCER ACTION NETWORK
Doug Heron	DUKE

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Laila A. Bell	Action for Children North Carolina
Wendy Kelly	Policy Group
CAROLIN COBB	The Policy Group
Meredith Funder	The Policy Group
William J. Bennett	
Vicky Young	DOE
Kerry Hall	DoI
JOE LANIER	NELSON MUMFORDS
Connie Killian	" "
Tom Teague	" "
Randy Pawett	Oracle

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January 31, 2013

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NAME	FIRM OR AGENCY AND ADDRESS
Ken Wright	BCBSNC
Mark Gentry	BCBSNC
Kelly Nicholson	Gov office
Jimmy Broughton	Womble Carlyle
Kimberly Harper	Nurse of the day
Daniel Gunn	Intern
Mona Gardner	GSK
Parvati S. Chel	P. Chel & Assoc.
Ben Sommy	Piedmont Health Services
Rebecca Whitaker	NCCHCIA
Matthew McConnell	Carolina's Healthcare System

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Chris Valauri	Valauri Group, LLC
Robert PASCHAL	Young Moore
FRED JOYNER	NAIFA-NC
Erin Wynia	NCLM
BJ Miller	Cove Health
Gretchen Kelly	FirstHealth
Ed Smiley	Brooks Presne
Chris Wellman	" "
Sam Sants	NDP
Jake Parker	NCFB

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Chuck Stone	SEANA
Johanna Field	NASW-NC
Cynthia Barnett	NC Christian Science Committee on Publication
Casey Stinner	NCAAC
Denise Elder	News Observer
Kris Horton	DHHS

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Asheley Cooper	AARP - NC
Helen Savage	AARP - NC
Michelle Frazier	MFS
John McMillan	MFS
Ben Popkin	NCDOI
Rose Williams	NCDOI
BUCK LATTIMORE	NC CHIROPRACTIC ASSOCIATION
Jean Holliday	NCDOI
Loyce Peters	CSS

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JAY PETERS	CSS
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Christni Cruz	Wenke Nord
~~Ben Matthews~~	NC DAD
David Kolbrock	NC Board of Nursing
Melissa Reed	PPHS
Laurie Onorio	FSP
Kara Weishaar	Smith Anderson
Greg Griggs	NCAFP
Shannon Dawler no	NCAFP
REYLA MANGUM	SM

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Julia Adams	The Arc of NC
Clark Piemer	Civitas
Abby Emmanuel	NMSS
Chp Byers	ncms
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Sarah Rothacker	Probroker & Associates
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Ric Martinez	NC. News Network
Maurice Griffin	News 14

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DANIEL VANLIERE	VIOANT HEALTH
Matt Gross	NCC
g. Miller	MAC
Ed Heath	McBride Wood
Adam Linher	NC Justice Center
Justin Guillogy	Progress NC
Jim D. H.	NALP
Tom Uhlman	Durham NC
Jamie Fitzgerald	NC Values
JEFF Hux	"

VISITOR REGISTRATION SHEET

Senate INSURANCE Committee

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January 31, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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**Senate Committee on Insurance
Wednesday, April 17, 2013, 10:00 AM
1027/1128 Legislative Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 180	Auto Insurance/Allow Optional Enhancements.	Senator Apodaca
SB 181	Auto Insurance/Young Driver Classification.	Senator Apodaca
SB 476	NC Captive Insurance Act.	Senator Meredith Senator Apodaca

**Senate Committee on Insurance
Wednesday, April 17, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building**

MINUTES

The Senate Committee on Insurance met at 10:00 AM on April 17, 2013 in Room 1027/1128 of the Legislative Building. Nine members were present.

Senator Wesley Meredith, Chair, presided.

Cole Harsell from Winston-Salem, Colton Estes from Matthews and Sawyer Strand from Faison served as pages.

S. B. 180 Auto Insurance/Allow Optional Enhancements

Senator Apodaca was introduced to explain the bill. Senate Bill 180 would allow automobile insurers to file individually with the Commissioner for approval optional enhancements to their automobile policies. The enhancements could then be offered as an endorsement to an automobile policy. Any additional premium resulting from the enhancement must be included with the proposed enhancement filed with the Commissioner. Tim Hovis an attorney from the Research Division assisted with questions that came from the discussion. John McMillan an attorney from Manning Fulton spoke. Rose Vaughn Williams, Legislative Counsel for the North Carolina Department of Insurance also spoke regarding the bill. As a result of the discussion an amendment was drafted during the committee and was brought forth. Senator Hise moved to accept the amendment before the committee and it was carried. Senator Ford motioned – unfavorable to the bill, favorable to the bill as amended and the amendment is to be rolled into a purposed committee substitute and it carried.

S. B. 181 Auto Insurance/Young Driver Classification

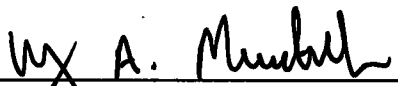
Senator Apodaca was introduced to speak on the bill. Senator Apodaca then requested Tim Hovis an attorney from the Research Division to also speak. Rose Vaughn Williams, Legislative Counsel for the North Carolina Department of Insurance also spoke and stated that the Insurance Department was in favor of both bills (SB180 and SB181). Senator Ford moved for a favorable report and it carried.

S. B. 476 NC Captive Insurance Act

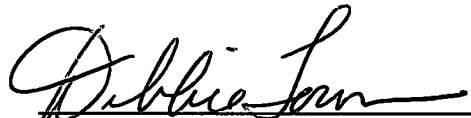
This bill was first announced to be for discussion only due to its length; however these minutes reflect that the committee was able to come to a vote. Senator Meredith was introduced by Senator Apodaca to speak on the bill. Senator Meredith brought forth an amendment. Senator Hise moved to accept the amendment and it carried. Rose Vaughn Williams, Legislative Counsel for the North Carolina Department of Insurance was introduced to speak on this bill.

Ray Martinez, Senior Deputy Commissioner to the North Carolina Department of Insurance and Jeffery Trendel, Deputy Commissioner of the same department both spoke on this bill. Senator Ford moved – unfavorable to the bill, favorable to the bill as amended and the amendment is to be rolled into a purposed committee substitute and it carried. The bill was recommended to be referred to the Senate Finance Committee.

The meeting adjourned at 10:45.



Senator Wesley Meredith, Chair
Presiding



Debbie Lown, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

Wednesday, April 17, 2013

Senator Meredith,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

SB 180

Auto Insurance/Allow Optional Enhancements.

Draft Number: S180-PCS75284-RG-4

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 1

Senator Wesley Meredith will handle SB 180



**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

Wednesday, April 17, 2013

Senator Meredith,
submits the following with recommendations as to passage:

FAVORABLE

SB 181

Auto Insurance/Young Driver Classification.

Draft Number: None

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 1

Senator Wesley Meredith will handle SB 181



**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

CORRECTED REPORT #1

Thursday, April 18, 2013

Senator Apodaca,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

SB 476

NC Captive Insurance Act.

Draft Number: S476-PCS75285-TP-16

Sequential Referral: None

Recommended Referral: Finance

Long Title Amended: No

TOTAL REPORTED: 1

Senator Tom Apodaca will handle SB 476



* C M R 3 3 S - V - 2 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 180

Short Title: Auto Insurance/Allow Optional Enhancements.

(Public)

Sponsors: Senators Apodaca (Primary Sponsor); and Hise.

Referred to: Insurance.

March 6, 2013

A BILL TO BE ENTITLED
AN ACT TO ALLOW INSURANCE COMPANIES WRITING PRIVATE AUTOMOBILE
INSURANCE IN NORTH CAROLINA TO OFFER OPTIONAL PROGRAM
ENHANCEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-36-43. Private passenger automobile optional program enhancements authorized not altering coverage under Rate Bureau jurisdiction.

(a) Member companies writing private passenger automobile insurance under this Article may incorporate optional enhancements to their automobile programs as an endorsement to an automobile policy issued under this Article if the insurer has filed the proposed enhancement with the Commissioner and if the proposed enhancement is approved by the Commissioner. Any approved optional enhancements shall be considered outside the authority of the Rate Bureau. If the proposed enhancement will include an additional premium charge, the proposed premium charge shall be included with the proposed program enhancements filed with the Commissioner. The Commissioner shall review the proposed premium charges to ensure that they are based on sound actuarial principles. Amendments to private passenger automobile program enhancements are subject to the same requirements as initial filings. Neither the acceptance, renewal of a policy, nor any underwriting rating criteria shall be conditioned by a company upon the acceptance by the policyholder of any optional automobile enhancements. A rate amendment authorized by this section is not a rate deviation and is not subject to the requirements for rate deviations set forth in G.S. 58-36-30(a).

(b) Any premiums, expenses, or losses associated with individual company automobile program enhancements shall not be submitted by the member companies to their statistical organization for inclusion with the data required by the Rate Bureau for ratemaking purposes. Insurers shall utilize a statistical code for reporting premiums and losses resulting from program enhancements filed under this section and shall advise the Department as to the location in the annual statement where this code will be reported."

SECTION 2. This act becomes effective July 1, 2013.



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____

DATE 4/17/13

S. B. No. 180

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

1 moves to amend the bill on page 1, line 30

2 () WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 "Section 2. This act becomes
5 effective July 1, 2013 and applies
6 to optional enhancements filed and
7 approved on or after that date."

8 _____

9 _____

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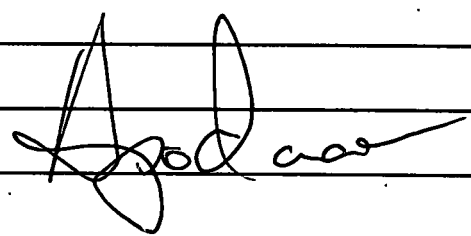
16 _____

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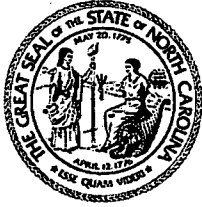
19 _____

SIGNED _____



ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



SENATE BILL 180: Auto Insurance/Allow Optional Enhancements

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Apodaca
Analysis of: First Edition

Date: April 15, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *Senate Bill 180 would allow automobile insurers to file individually with the Commissioner for approval optional enhancements to their automobile policies. The enhancements could then be offered as an endorsement to an automobile policy. Any additional premium resulting from the enhancement must be included with the proposed enhancement filed with the Commissioner.*

Optional enhancements would be outside the jurisdiction of the Rate Bureau.

CURRENT LAW: Article 36 of Chapter 58 requires the N.C. Rate Bureau to file jointly with the Commissioner for approval the rates, rating plans, and policy forms for nonfleet private passenger motor vehicle insurers. Optional endorsements filed by individual companies are not authorized under current law.

BILL ANALYSIS: Senate Bill 180 would create a new section allowing automobile insurers to file individually with the Commissioner for approval optional enhancements to their automobile policies. These enhancements could then be offered as an endorsement to an automobile policy. Any additional premium resulting from the enhancement must be included with the proposed enhancement filed with the Commissioner and must be reviewed by the Commissioner to that the additional premium is based on sound actuarial principles. The acceptance or renewal of a policy may not be conditioned upon the acceptance by a policyholder of an optional enhancement.

The bill specifically provides that any rate amendment based on the enhancement is not a rate deviation under current law. Under current law, G.S. 58-36-30(a), proposed rate deviations must be filed with the Commissioner and the Rate Bureau and approved by the Commissioner.

Under the bill, optional enhancements would be outside the jurisdiction of the Rate Bureau.

EFFECTIVE DATE: Senate Bill 180 would become effective July 1, 2013.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 181

Short Title: Auto Insurance/Young Driver Classification.

(Public)

Sponsors: Senator Apodaca (Primary Sponsor).

Referred to: Insurance.

March 6, 2013

A BILL TO BE ENTITLED
AN ACT TO ALIGN AUTO INSURANCE RISK AND RATES IN NORTH CAROLINA BY
ALLOWING THE CLASSIFICATION OF YOUNG DRIVERS AS A FACTOR IN THE
SETTING OF RATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-25 reads as rewritten:

"§ 58-3-25. Discriminatory practices prohibited.

(a) Except as specified in G.S. 58-36-65 and G.S. 58-37-35, No no insurer shall after
September 1, 1975, base any standard or rating plan for private passenger automobiles or
motorcycles, in whole or in part, directly or indirectly, upon the age or sex of the persons
insured."

SECTION 2. G.S. 58-36-65 reads as rewritten:

**"§ 58-36-65. Classifications and Safe Driver Incentive Plan for nonfleet private passenger
motor vehicle insurance.**

(a) The Bureau shall file, subject to review, modification, and promulgation by the
Commissioner, such rate classifications, schedules, or rules that the Commissioner deems to be
desirable and equitable to classify drivers of nonfleet private passenger motor vehicles for
insurance purposes. Subsequently, the Commissioner may require the Bureau to file
modifications of the classifications, schedules, or rules. If the Bureau does not file the
modifications within a reasonable time, the Commissioner may promulgate the modifications.
In promulgating or modifying these classifications, schedules, or rules, the Commissioner may
give consideration to the following:

- (1) Uses of vehicles, including without limitation to farm use, pleasure use,
driving to and from work, and business use;
- (2) Principal and occasional operation of vehicles;
- (3) Years of driving experience of insureds as; Whether any licensed drivers are
under 19 years of age;
- (4) The characteristics of vehicles; or
- (5) Any other factors, not in conflict with any law, deemed by the
Commissioner to be appropriate.

...

(g) If an applicant for the issuance or renewal of a nonfleet private passenger motor
vehicle insurance policy knowingly makes a material misrepresentation of the years of driving
experience as to whether the applicant is 19 years of age or older or as to the driving record of
any named insured or of any other operator who resides in the same household and who
customarily operates a motor vehicle to be insured under the policy, the insurer may:



- (1) Cancel or refuse to renew the policy;
- (2) Surcharge the policy in accordance with rules to be adopted by the Bureau and approved by the Commissioner; or
- (3) Recover from the applicant the appropriate amount of premium or surcharge that would have been collected by the insurer had the applicant furnished the correct information.

(h) If an insured disputes his insurer's determination that the operator of an insured vehicle was at fault in an accident, such dispute shall be resolved pursuant to G.S. 58-36-1(2), unless there has been an adjudication or admission of negligence of such operator.

(i) As used in this section, "conviction" means a conviction as defined in G.S. 20-279.1 and means an infraction as defined in G.S. 14-3.1.

(j) Subclassification plan surcharges shall be applied to a policy for a period of not less nor more than three policy years.

(k) The subclassification plan may provide for premium surcharges for insureds ~~having less than three years' driving experience as licensed drivers who are less than 19 years old.~~

(l) Except as provided in this section and G.S. 58-36-30(d), no classification or subclassification plan for nonfleet private passenger motor vehicle insurance shall be based, in whole or in part, directly or indirectly, upon the age or gender of insureds.

(m) Notwithstanding any other provision of law, with respect to motorcycle insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State, subject to the Commissioner's approval, a downward deviation in the rates of insureds who show proof of satisfactory completion of the Motorcycle Safety Instruction Program or a comparable motorcycle safety program provided by federally certified instructors for members of the military."

SECTION 3. G.S. 58-37-35 reads as rewritten:

"§ 58-37-35. The Facility; functions; administration.

...

(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory statistical organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household ~~have two years' driving experience as licensed drivers~~ are 18 years of age or older and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. The order shall not affect any contract or policy made or issued before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates

1 for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments
2 under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility
3 business, but shall provide an allowance for contingencies. There shall be a strong presumption
4 that the rates and premiums for the business of the Facility are neither unreasonable nor
5 excessive.

6 (m) In addition to annual premiums, the rules of the Facility shall allow semiannual and
7 quarterly premium terms."

8 **SECTION 4.** This act becomes effective July 1, 2013.



SENATE BILL 181: Auto Insurance/Young Driver Classification

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Apodaca
Analysis of: First Edition

Date: April 16, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *Senate Bill 181 would authorize the Rate Bureau to file and the Commissioner to approve rate classifications, schedules and rules for private passenger automobile insurance that take into consideration whether licensed drivers are under the age of 19.*

In addition, the bill amends the definition of clean risk for purposes of the clean risk subclassification in the Reinsurance Facility to include owners with only licensed operators in the owner's household who are 18 years of age or older.

CURRENT LAW: Under current law, insurers are prohibited from basing any standard, rating plan, classification, or subclassification plan for private passenger automobile insurance on the age of the insured, with the exception of downward deviations for insureds 55 years of age or older. Years of driving experience may be considered, however, and premium surcharges all allowed for insureds with less than three years' of driving experience. G.S. 58-3-25 and G.S. 58-36-65(l)

BILL ANALYSIS: Sections 1 and 2 of Senate Bill 181 would allow the Rate Bureau to file with the Commissioner and the Commissioner to promulgate rate classifications, schedules, or rules which consider whether licensed drivers are under the age of 19 years. The bill deletes current law referencing years of driving experience as a factor.

Under existing law, rates for clean risks assigned to the Reinsurance Facility may not exceed rates for clean risks outside of the Facility. Current law includes as clean risks those owners with only licensed operators having "two years' driving experience as licensed drivers." The age of a driver is not considered under the current definition of clean risk. Section 3 of the bill would limit the clean risk definition to include those owners with only licensed operators in his or her household that are 18 years of age or older. The bill deletes existing language in the definition referring to licensed operators with "two years' driving experience as licensed drivers."

EFFECTIVE DATE: Senate Bill 181 becomes effective July 1, 2013.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 476*

Short Title: NC Captive Insurance Act. (Public)

Sponsors: Senators Meredith, Apodaca (Primary Sponsors); Goolsby and Rucho.

Referred to: Insurance.

March 28, 2013

A BILL TO BE ENTITLED
AN ACT TO ENACT THE NORTH CAROLINA CAPTIVE INSURANCE ACT.
The General Assembly of North Carolina enacts:

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

"Part 9. Captive Insurance Companies.

"Subpart 1. General Provisions.

"§ 58-10-335. Purpose.

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

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

"§ 58-10-340. Definitions.

The following definitions apply in this Part:

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

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

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

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

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

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

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



* S 4 7 6 - V - 1 *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) G.S. 114-2.3.

(2) G.S. 147-17.

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

"§ 58-10-355. Organizational examination.

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

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

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

"§ 58-10-365. Names of companies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) Incorporated as a mutual corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 **"§ 58-10-385. Directors.**

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

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

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

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

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

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

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

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

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

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

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

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

26 **"§ 58-10-405. Annual reports.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- b. The general background and experience of the staff engaged in the audit, including the experience in auditing captives or other insurance companies.
- c. That the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this section with the Commissioner.
- d. That the accountant consents to the requirements of G.S. 58-10-422(b) and (c) and that the accountant consents and agrees to make available for review by the Commissioner, the Commissioner's appointed agent, or other designee the work papers as defined in G.S. 58-10-422(c).
- e. That the accountant is properly licensed by an appropriate state licensing authority and that he or she is a member in good standing of the American Institute of Certified Public Accountants.

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

- a. Balance sheets reporting assets, liabilities, capital, and surplus.
- b. Statements of operations.
- c. Statements of cash flow.
- d. Statements of changes in capital and surplus.
- e. Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the captive insurance company and approved by the Commissioner, and shall include:
1. A reconciliation of differences, if any, between the audited financial report and the report of its financial condition filed with the Commissioner in accordance with G.S. 58-10-405(b).
 2. A summary of ownership and relationship of the captive insurance company and all affiliated corporations or companies insured by the captive insurance company.
 3. A narrative explanation of all material transactions and balances with the captive insurance company.

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

"§58-10-422. Independent certified public accountants.

(a) A captive insurance company, after becoming subject to this Part, shall within 60 days report to the Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in G.S. 58-10-420.

(b) A captive insurance company shall require its independent certified public accountant to immediately notify in writing an officer and all members of the board of directors of the captive insurance company of any determination by the independent certified public accountant that the captive insurance company has materially misstated its financial condition in its report to the Commissioner as required in G.S. 58-10-405. The independent certified

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

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

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

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

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

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

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

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

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

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

44 **"§ 58-10-430. Examinations.**

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

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

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

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

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

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

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

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

"§ 58-10-440. Investment requirements.

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

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

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

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

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

24 "§ 58-10-445. Reinsurance.

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

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

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

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

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

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

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

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

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

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

"§ 58-10-455. Taxation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-10-465. Applicable provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Subpart 2. Protected Cell Captive Insurance Companies.

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

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

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

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

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

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

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

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

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

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

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

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

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

with respect to its insurance business to the protected cell in accordance with the approved plan of operation.

(3) A protected cell shall have its own distinct name or designation that shall include the words "protected cell" or "incorporated cell."

(4) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(5) An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner. Each incorporated protected cell of a protected cell captive insurer shall be treated as a captive insurer for purposes of this Part. Unless otherwise permitted by the organizational documents of a protected cell captive insurer, each incorporated protected cell of the protected cell captive insurer must have the same directors, secretary, and registered office as the protected cell captive insurer.

(6) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation and participant contracts approved by the Commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell shall be in cash or in readily marketable securities with established market values.

(b) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company, unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the protected cell. No protected cell captive insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, the protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and otherwise allowed under applicable law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding Article 30 of this Chapter:

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

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

"Subpart 3. Branch Captive Insurance Companies.

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

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

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

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

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

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

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

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

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

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

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

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

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

In the case of an alien captive insurance company seeking to become licensed as a branch captive insurance company, the alien captive insurance company shall petition the Commissioner to issue a certificate setting forth the Commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience, and 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.

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

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

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

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

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

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

24 **"Subpart 4. Special Purpose Financial Captives.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-10-575. Minimum capital.

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

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

"§ 58-10-580. Authorized activities.

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

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

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

(1) Entering into SPFC contracts.

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

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

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

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

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

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

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

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

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

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

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

- (1) A protected cell shall be established only for the purpose of insuring or reinsuring risks of one or more SPFC contracts with a counterparty with the intent of facilitating an insurance securitization.
- (2) Each protected cell shall be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to the counterparty for the SPFC contract with each cell, and other factors as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the Commissioner.
- (3) Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the SPFC, and no SPFC shall be or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account.
- (4) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the Commissioner, and no other attribution of assets or liabilities by an SPFC between the SPFC's general account and its protected cell or cells is permitted. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and the related insurance securitization transaction, including any securities issued by the SPFC as part of the insurance securitization, to a particular protected cell. The insurance obligations, assets, and liabilities relating to the SPFC contract and the insurance securitization transaction that are attributed to a particular protected cell shall be consistent with:
 - a. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell.
 - b. The performance under an SPFC contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated, at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or company or group company, or any of them, in common control with them, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the agreement.
- (5) No assets of a protected cell shall be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, one or more SPFC contracts may be attributed to a protected cell only if the SPFC contracts are intended to be and ultimately are part of a single securitization transaction.
- (6) No sale, exchange, or other transfer of assets shall be made by the SPFC between or among any of the SPFC's protected cells without the consent of the Commissioner, counterparty, and each protected cell.
- (7) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, no sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a counterparty or parent without the Commissioner's approval and the sale, exchange, transfer, dividend, or distribution shall not be approved if the sale,

exchange, transfer, dividend, or distribution would result in a protected cell's insolvency or impairment.

- (8) An SPFC may pay interest or repay principal, or both, and make distributions or repayments with respect to any securities attributed to a particular protected cell from assets or cash flows relating to or emerging from the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with this Part, or as otherwise approved by the Commissioner.

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

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

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

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

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

(1) The creation of a protected cell shall not create, with respect to that protected cell, a legal person separate from the SPFC.

(2) Notwithstanding subdivision (a)(1) of this subsection, a protected cell shall have its own distinct name or designation that includes the words "protected cell." The SPFC shall transfer all assets attributable to the protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

(3) Although a protected cell is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of the court by name as the property would have been if the protected cell were a separate legal person.

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

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

(b) Nothing in this section shall be construed to prohibit an SPFC from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the assets of that protected cell and not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 **"§ 58-10-605. Reinsurance.**

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-10-620. Dividends.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

made pursuant to an SPFC security, SPFC contract, or the SPFC from taking any action required to make the payment.

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

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

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

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

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

"Subpart 5. Other Provisions.

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

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

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

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

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

(4) G.S. 58-2-185. – Record of business kept by companies and agents; Commissioner may inspect.

(5) G.S. 58-2-190. – Commissioner may require special reports.

(6) G.S. 58-2-195. – Commissioner may require records, reports, etc., for agencies, agents, and others.

(7) G.S. 58-2-200. – Books and papers required to be exhibited.

(8) G.S. 58-5-1. – Deposits; use of master trust.

(9) G.S. 58-7-50. – Maintenance and removal of records and assets.

(10) G.S. 58-7-55. – Exceptions to requirements of G.S. 58-7-50."

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

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

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

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

7"

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

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

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

- 14 ...
- 15 (10) An activity in this State by or on the sole behalf of a captive insurer licensed
16 and subject to regulation in another jurisdiction other than this State that
17 insures solely the risks of the company's parent and affiliated
18 companies, companies, or the risks of controlled unaffiliated companies.

19"

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

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

22 ...

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

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

31"

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

33 **"§ 97-190. Excess insurance.**

34 ...

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

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

44"

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 476*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S476-ATP-9 [v.1]

Page 1 of 1

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date _____, 2013

Senator _____

- 1 moves to amend the bill on page 38, line 31, by deleting the phrase "§ 58-10-570." and
2 substituting the phrase "§ 58-10-650.".

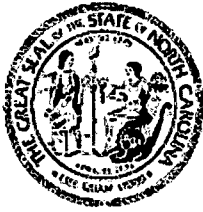
SIGNED W. A. Murchett
Amendment Sponsor

SIGNED W. A. Murchett
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* S 4 7 6 - A T P - 9 - V - 1 *



SENATE BILL 476: NC Captive Insurance Act

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sens. Meredith, Apodaca
Analysis of: First Edition

Date: April 16, 2013
Prepared by: Peter Ledford
Committee Counsel*

SUMMARY: *Senate Bill 476 would allow captive insurance companies in the State and establish procedures for the organization and regulation of their operations.*

[As introduced, this bill was identical to H473, as introduced by Reps. Dockham, Howard, Johnson, Tine, which is currently in House Insurance, if favorable, Commerce and Job Development, if favorable, Finance.]

BACKGROUND: Captive insurance companies are insurance companies that are established solely to insure the risks of a specific company or group. The captive insurance company is a wholly owned subsidiary of a parent company or an industry association. The parent company pays premiums to the captive insurance company, who covers any claims against the parent company. Unlike traditional insurance, when the captive insurance company profits, the parent company does as well. Captive insurance companies are typically used to self-insure against predictable risks, such as workers' compensation and malpractice. Captive insurance companies can purchase reinsurance to cover any claims that may exceed the premiums collected.

CURRENT LAW: Captive insurance companies are not allowed under current North Carolina law.

BILL ANALYSIS: Senate Bill 476 would establish the procedures for the organization and regulation of the operations of captive insurance companies within the State.

Section 1 would create a new Part in Article 10 of Chapter 58, the North Carolina Captive Insurance Act.

Subpart 1. General Provisions.

G.S. 58-10-335 would establish the title of the Act, the North Carolina Captive Insurance Act, and declare the purpose of the Act, to establish the procedures for the organization and regulation of the operations of captive insurance companies within this State and thereby promote the general welfare of the people of this State.

G.S. 58-10-340 would provide definitions for the terms used throughout the Act. Key terms include:

- Association captive insurance company. – A company that insures the risks of the members of an association and their affiliated companies.
- Branch captive insurance company. – An insurance company licensed pursuant to the laws of a foreign country that is licensed by the Commissioner of Insurance (Commissioner) to transact in this State. A branch captive insurance company is a pure captive insurance company with respect to operations in this State.
- Industrial insured captive insurance company. – A company that insures the risks of a group of companies having shared governance and that may insure the risks of the affiliated companies and controlled unaffiliated businesses.



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- Protected cell. – Either (a) a separate account established by a protected cell captive insurance company in which an identified pool of assets and liabilities are segregated and insulated from the remainder of the protected cell captive insurance company's assets and liabilities, or (b) a separate account established by a special purpose financial captive (SPFC) for one SPFC contract and the accompanying insurance securitization.
- Protected cell captive insurance company. – A captive insurance company where (a) the minimum capital and surplus are provided by one or more sponsors, (b) the company is formed or licensed under the Act, (c) the company insures the risks of separate participants through participant contracts, and (d) the company funds its liability to each participant through one or more protected cells.
- Pure captive insurance company. – A company that insures risks of its parent company and affiliated or controlled unaffiliated businesses.
- Risk retention group. – A captive insurance company organized under the laws of the State pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901, et seq., as a stock or mutual corporation or as a reciprocal or other limited liability entity.
- Special Purpose Financial Captive (SPFC). – A captive insurance company that has received a certificate of authority from the Commissioner for the limited purposes provided in Subpart 4.

G.S. 58-10-345 would set forth the requirements for an applicant to obtain a license to form a captive insurance company in the State and the types of insurance a captive insurance company is permitted to issue.

G.S. 58-10-350 would authorize the Commissioner to hire consultants and other professionals to expedite and complete application reviews, examinations, and other regulatory activities. The contracts to hire consultants and other professionals would not be subject to G.S. 114-2.3, G.S. 147-17, and Articles 3, 3C, and 8 of Chapter 143 and their associated rules.

G.S. 58-10-355 would authorize the Commissioner to perform an organizational examination before issuing a license to an applicant.

G.S. 58-10-360 would require a captive insurance company, before being issued a license, to report to the Commissioner the name and address of the manager retained to manage the captive insurance company, and also requires the Commissioner to approve the manager.

G.S. 58-10-365 would prohibit a captive insurance company from adopting a name that is the same as, deceptively similar to, or likely to be confused with any business name currently registered in the State.

G.S. 58-10-370 would specify the capital and surplus requirements for the different types of captive insurance companies. The requirements are as follows:

- For a pure captive insurance company, not less than \$250,000
- For an association captive insurance company, not less than \$500,000
- For an industrial insured captive insurance company, not less than \$500,000
- For a risk retention group, not less than \$1,000,000
- For a protected cell captive insurance company, not less than \$250,000

G.S. 58-10-375 would require a captive insurance company receive prior approval from the Commissioner before paying a dividend or other distribution out of capital and surplus.

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G.S. 58-10-380 would set forth the requirements for the formation of a captive insurance company.

G.S. 58-10-385 would require a captive insurance company report to the Commissioner within 30 days after a change in its executive officers or directors. It would also prohibit directors, officers, and employees from receiving any personal benefit as a result of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the captive insurance company.

G.S. 58-10-390 would require a captive insurance company adopt a conflict of interest policy for officers, directors, and key employees.

G.S. 58-10-395 would require a captive insurance company receive prior approval from the Commissioner before any material change in the company's previously filed business plan. Any immaterial change in other information included in the application does not require prior approval, but must be filed within 60 days.

G.S. 58-10-400 would prohibit any person in or from the State from acting as a managing general agent, producer, or reinsurance intermediary for a captive insurance company without authorization from the Commissioner.

G.S. 58-10-405 would require a captive insurance company file an annual report with the Commissioner and sets forth the reporting requirements.

G.S. 58-10-420 would require a captive insurance company have an audit prepared annually by an independent certified public accountant and the audit be filed with the Commissioner. The annual audit would be required to include a statement of actuarial opinion prepared by a qualified actuary evaluating the captive insurance company's loss and loss expense reserves.

G.S. 58-10-422 would set forth the specific requirements of the annual audit required by G.S. 58-10-420.

G.S. 58-10-425 would set forth the specific requirements of the deposit required from a captive insurance company by G.S. 58-10-345(c)(6), including increasing, releasing, and receiving interest on the deposit.

G.S. 58-10-430 would authorize the Commissioner to conduct an examination of a captive insurance company whenever the Commissioner determines it is prudent. Any examination conducted pursuant to this section is to be paid by the captive insurance company being examined.

G.S. 58-10-435 would set forth the reasons that the license of a captive insurance company may be suspended or revoked.

G.S. 58-10-440 would set forth the investment requirements for association captive insurance companies and risk retention groups. All other forms of captive insurance companies are not subject to restrictions on allowable investments, unless the Commissioner believes that an investment may threaten the solvency or liquidity of a captive insurance company.

G.S. 58-10-445 would authorize captive insurance companies to provide reinsurance and to take credit for the reinsurance of risks ceded to the captive insurance company if certain criteria are met.

G.S. 58-10-450 would set forth that a captive insurance company is not required to join a rating association. It would also prohibit a captive insurance company from joining or contributing financially to any plan, pool, association, or guaranty or insolvency fund in the State or from receiving any benefit from any such plan, pool, association, or guaranty or insolvency fund.

G.S. 58-10-455 would set forth the premium tax rates for captive insurance companies and establishes the Captive Insurance Regulatory Fund, which would receive appropriations to cover the cost of staff

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and other expenses incurred in regulating and promoting the captive insurance industry. The tax rates are as follows:

- For direct premiums collected or contracted:
 - 0.4% on the first \$20,000,000
 - 0.3% on each dollar thereafter
- For assumed reinsurance premiums
 - 0.225% on the first \$20,000,000
 - 0.150% on the next \$20,000,000
 - 0.050% on the next \$20,000,000
 - \$0.025% on each dollar thereafter
- The annual minimum aggregate tax would be \$5,000 and the maximum would be \$100,000, for all captive insurance companies except for protected cell captive insurance companies.
- For protected cell captive insurance companies with more than 10 cells, the annual minimum aggregate tax would be \$10,000 and the maximum would be the lesser of (i) \$100,000, plus \$5,000 multiplied by the number of cells over 10 and (ii) \$200,000.

G.S. 58-10-460 would authorize the Commissioner to adopt rules to carry out the provisions of the Act.

G.S. 58-10-465 would provide that no part of Chapter 58 applies to the Act, unless specifically set forth in the Act.

G.S. 58-10-470 would authorize the Commissioner to adopt rules to establish standards to ensure that a parent or its affiliate company, or an industrial insured or its affiliate company, is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company or an industrial insured captive insurance company.

G.S. 58-10-475 would set forth the terms and conditions for supervision, rehabilitation, and liquidation for captive insurance companies.

G.S. 58-10-480 would authorize any specified public body to expend public funds for the purchase of capital stock in a captive insurance company or to provide guaranty capital in a mutual captive insurance company, provided that at the time of the expenditure adequate insurance markets in the United States are not available to cover the risks, hazards, and liabilities of the public body, or that the needed coverage is only available at excessive rates or with unreasonable deductibles.

G.S. 58-10-485 would set forth the penalties for violating any provision of the Act or any rule or regulation authorized by the Act.

G.S. 58-10-495 would provide that a captive insurance company that reinsures life insurance policies must maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring life insurance policies.

Subpart 2. Protected Cell Captive Insurance Companies.

G.S. 58-10-500 would set forth additional provisions for the formation of a protected cell captive insurance company.

G.S. 58-10-505 would set forth additional filing requirements for an applicant forming a protected cell captive insurance company.

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G.S. 58-10-510 would set forth the conditions under which a protected cell captive insurance company is allowed to establish and maintain protected cells.

G.S. 58-10-515 would set forth the requirements for participation in a protected cell captive insurance company.

G.S. 58-10-520 would authorize the assets of two or more protected cells to be combined for the purposes of investment, provided that the assets can still be segregated for accounting and other purposes.

G.S. 58-10-525 would set forth the terms and conditions for supervision, rehabilitation, and liquidation for protected cell captive insurance companies, including that the assets of one protected cell may not be used to pay any expenses or claims of any other protected cell.

Subpart 3. Branch Captive Insurance Companies.

G.S. 58-10-530 would authorize the formation of branch captive insurance companies in the State, provided that no branch captive insurance company may do any business in the State unless it maintains the principal place of business for its branch operations in the State.

G.S. 58-10-535 would require that, before a license is issued to a branch captive insurance company, security for the payment of liabilities attributable to the branch operations totaling an amount for a minimum capital requirement and an amount for reserves must be held in the form of a trust account, an irrevocable letter of credit, or cash on deposit with the Commissioner, for the minimum capital requirement only, or a combination of each.

G.S. 58-10-540 would require an alien captive insurance company seeking to become licensed as a branch captive insurance company petition the Commissioner to issue a certificate setting forth the Commissioner's finding that the licensing and maintenance of the branch operations will promote the general good of the State.

G.S. 58-10-545 would set forth the annual reporting requirements for a branch captive insurance company.

G.S. 58-10-550 would provide that any examination of a branch captive insurance company conducted by the Commissioner shall be of the branch business and branch operations only.

Subpart 4. Special Purpose Financial Captives.

G.S. 58-10-555 would provide for the creation of special purpose financial captives (SPFCs) exclusively to facilitate the securitization of one or more risks, as a means of accessing alternative sources of capital and achieving the benefit of securitization.

G.S. 58-10-560 would set forth the controlling provisions for a SPFC.

G.S. 58-10-565 would set forth the application requirements for a SPFC.

G.S. 58-10-570 would set forth the requirements for the organization of a SPFC.

G.S. 58-10-575 would require a SPFC maintain a minimum capital and surplus of \$250,000, which must be in the form of cash. Additional capitalization may be determined, if so required, by the Commissioner.

G.S. 58-10-580 would set forth the authorized activities of a SPFC.

G.S. 58-10-585 and G.S. 58-10-590 would provide a basis for the creation and use of protected cells by a SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and generally making insurance securitizations more efficient.

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G.S. 58-10-595 would authorize a SPFC to issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its plan of operation, and its organizational documents.

G.S. 58-10-600 would authorize a SPFC to enter into asset management agreements.

G.S. 58-10-605 would authorize a SPFC to reinsure only the risks of a ceding insurer pursuant to a reinsurance contract. It would set forth the conditions that must be met in order to assume or retain exposure to insurance or reinsurance losses for its own account.

G.S. 58-10-610 would provide that no securities issued by a SPFC pursuant to an insurance securitization are to be considered an insurance or reinsurance contract.

G.S. 58-10-615 would set forth the disposition of assets of a SPFC and the investment limitations of a SPFC.

G.S. 58-10-620 would prohibit a SPFC from declaring or paying dividends in any form to its owners, other than in accordance with the securitization agreements.

G.S. 58-10-625 would require prior approval from the Commissioner before there is any change in a SPFC's plan of operations. It would also set forth the requirements for an annual audit and for the filing of a statement of operations.

G.S. 58-10-630 would set forth that the authority of the Commissioner expires at the cessation of business of a SPFC following termination or cancellation of a SPFC contract and the redemption of any related securities issued in connection with the SPFC contract.

G.S. 58-10-635 would set forth the terms and conditions for supervision, rehabilitation, and liquidation for SPFCs.

Subpart 5. Other Provisions.

G.S. 58-10-570 would set out what other sections in Chapter 58 are applicable to captive insurance companies under the Act.

Section 2 would require risk retention groups be chartered and licensed to write only liability insurance in accordance with the North Carolina Captive Insurance Act.

Section 3 would amend the exceptions under which a business may transact insurance business in the State without a license to include captive insurance companies licensed and subject to regulation in another state that solely insure the risks of the captive's parent company, affiliated companies, or controlled unaffiliated companies.

Section 4 would allow a business is licensed to self-insure for workers' compensation under Article 47 of Chapter 58 to maintain excess insurance or reinsurance through a captive insurance company licensed in the State.

Section 5 would allow a business is licensed to self-insure for workers' compensation under Article 5 of Chapter 97 to maintain excess insurance or reinsurance through a captive insurance company licensed in the State.

EFFECTIVE DATE: This act becomes effective July 1, 2013, if funds are appropriated for the 2013-2015 fiscal biennium to provide the Department with regulatory staff and resources to license and regulate captive insurance companies. If no funds are appropriated, then this act becomes effective on July 1 of a year in which the General Assembly appropriates funds to implement it.

**The North Carolina Department of Insurance substantially contributed to this summary.*

VISITOR REGISTRATION SHEET

Senate INSURANCE Committee

April 17, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
~~Bo Heath~~ Angel S	McBriarwood CR
Isntearan	NMRs
Rick Zechini	Williams Molk
Andy Ell	NKMR
Joquetero	CSS
Ben Scobbin	TS
Joe Stewart	IRS Strategy Group
Chris Evans	BCBS
Laurie Andrie	FSP
Tom Feltz	FSD

VISITOR REGISTRATION SHEET

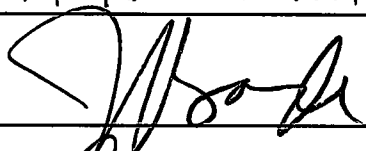
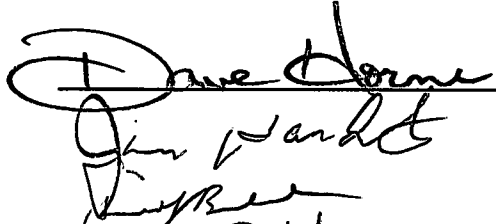
Senate **INSURANCE** Committee

April 17, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
	nmc
Liz Reynolds	NAMIC
PATRICK HANNAH	Lisanty Mutual
	BCS
Ray Mathew	NCDOI
Jeffrey TRENDL	NCDOI
Sue Taylor	NC Rate Bureau
Mickey Spivey	Young Moore and Henderson
Edith Davis	NC Reinsurance Facility
RAY EVANS	NC RATE BUREAU
	Smith Anderson
Jonathan Brubaker	USAC/NLC A
JAKE PARKER	Brubaker & Assoc.
	NLCB

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 17, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Fred Fuller	NC DOI
Bryan Hecker	NC DOI
Sherri Hubbard	NC DOI
Tricia Ford	NC DOI
Bob Mack	NC DOI
Rose Williams	NC DOI
R. B. Williams	BCI
Mary Beth	AARP NC
Sara Fender	IFNC
Robert Raschal	Young Thomas
Jerry Dockham	NC House

VISITOR REGISTRATION SHEET

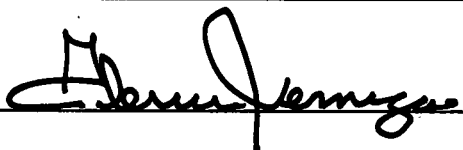
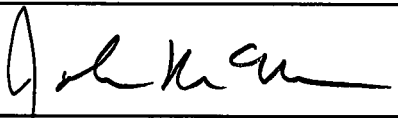
Senate **INSURANCE** Committee

April 17, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
ART LYON	GMAC INSURANCE
	GMAC Insurance
DAVID RICE	MFS
Michelle Frazier	MFS
	MFS
David Roni	N + O
Frank Folger	Nationwide Insurance
Susan Valentin	Nationwide
LEE MORTON	NATIONWIDE

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 17, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME

FIRM OR AGENCY AND ADDRESS

Dana Sykes

SEA

CS Hollis

TSS

Sam Saut

NP

John Palumbo

NCMAA

SENATE PAGES ATTENDING

COMMITTEE: Insurance ROOM: 1027

DATE: 4-17 TIME: 10 AM

PLEASE PRINT LEGIBLY!!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Cole Hurtzell	Winston-Salem	Brunstetter
2 Colton Estes	Matthews	Tarte
3 Sawyer Strand	Faison	Jackson
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

Senate Committee on Insurance
Wednesday, April 24, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 247	Freedom to Negotiate Health Care Rates.	Representative Burr Representative Starnes Representative Avila Representative McElraft
SB 615	Property Insurance Fairness.	Senator Brown
SB 690	Property Insurance Rate-Making Reform.	Senator Sanderson Senator Cook

*SB615 & SB690 are
for discussion only.*

Senate Committee on Insurance
Wednesday, April 24, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Insurance met at 10:00 AM on April 24, 2013 in Room 1027/1128 of the Legislative Building. Nine members were present.

Senator Tom Apodaca, Chair, presided.

Briggs Manness from Tryon, Natalie Brown from Mount Olive, Ron Davenport from Clayton and Nic Carroll from Wilmington served as pages.

H. B. 247 Freedom to Negotiate Health Care Rates

Representative Burr was asked to speak on the bill. House Bill 247 would prohibit contract provisions that create specified rate negotiations between health benefit plans and health care providers. Amy Jo Armstrong an attorney from the Research Division assisted with responses. Senator McKissick moved for a favorable report and it carried.

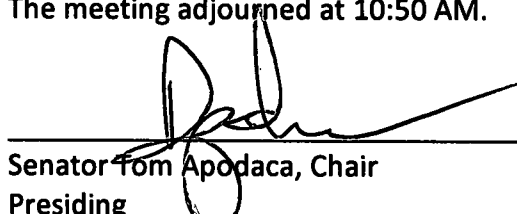
S. B. 615 Property Insurance Fairness

Senator Apodaca announced as it was noted in the Committee Notice, that this bill will be for discussion only. Senate Bill 615 makes the following changes to property insurance rate regulation: (1) requires insurers to report annually specific data on policies written and losses incurred by rate territory for posting by the Department on its website; (2) gives the Commissioner the authority, upon disapproval of a rate filing by the Rate Bureau, to order a decrease in rates from the existing rate; (3) limits agent's commission paid by the Beach Plan to 10% of written premium; (4) increases the cap on nonrecoupable assessments which may be assessed against insurers by the Beach Plan from \$1B to \$1.2B; and (5) exempts the Beach Plan from gross premium taxes paid by insurers. Senator Brown was then introduced to speak on the bill. Raymond Evans, Jr. CPCU/General Manager NCRB, NCRF from the North Carolina Rate Bureau was introduced to speak. Rose Vaughn Williams/Legislative Counsel from the North Carolina Department of Insurance was asked to speak by Senator Apodaca and remained to assist with questions. M. Royce Bennett/Board of Realtors President 2013 for Century 21 Real Estate and John Bode an attorney from Bode, Call & Stroupe, L.L.P. were also introduced and spoke.

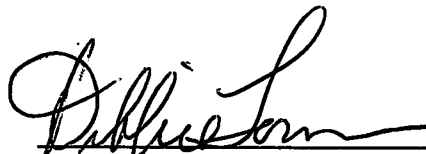
S. B. 690 Property Insurance Rate-Making Reform

This bill was removed from the agenda by the request of Senator Sanderson

The meeting adjourned at 10:50 AM.



Senator Tom Apodaca, Chair
Presiding



Debbie Lown, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**INSURANCE COMMITTEE REPORT
Senator Apodaca, Co-Chair
Senator Meredith, Co-Chair**

Wednesday, April 24, 2013

Senator Apodaca,
submits the following with recommendations as to passage:

FAVORABLE

HB 247 (CS#1)	Freedom to Negotiate Health Care Rates.
	Draft Number: None
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: No

TOTAL REPORTED: 1

Senator Wesley Meredith will handle HB 247



* C M R 3 6 9 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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2

HOUSE BILL 247
Committee Substitute Favorable 3/27/13

Short Title: Freedom to Negotiate Health Care Rates.

(Public)

Sponsors:

Referred to:

March 7, 2013

A BILL TO BE ENTITLED
AN ACT TO ALLOW HEALTH PROVIDERS AND HEALTH INSURERS TO FREELY
NEGOTIATE REIMBURSEMENT RATES BY PROHIBITING CONTRACT
PROVISIONS THAT RESTRICT RATE NEGOTIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 7 of Article 50 of Chapter 58 of the General Statutes is amended
by adding a new section to read:

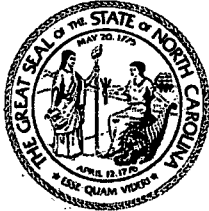
"§ 58-50-295. Prohibited contract provisions related to reimbursement rates.

No contract with a health care provider shall do any of the following:

- (1) Prohibit, or grant a health insurance carrier an option to prohibit, the provider from contracting with another health insurance carrier to provide health care services at a rate that is equal to or lower than the payment specified in the contract.
- (2) Require the provider to accept a lower payment rate in the event that the provider agrees to provide health care services to any other health insurance carrier at a rate that is equal to or lower than the payment specified in the contract.
- (3) Require, or grant a health insurance carrier an option to require, termination or renegotiation of an existing health care contract in the event that the provider agrees to provide health care services to any other health insurance carrier at a rate that is equal to or lower than the payment specified in the contract.
- (4) Require, or grant a health insurance carrier an option to require, the provider to disclose, directly or indirectly, the provider's contractual rates with another health insurance carrier.
- (5) Require, or grant a health insurance carrier an option to require, the nonnegotiated adjustment by the issuer of the provider's contractual rate to equal the lowest rate the provider has agreed to charge any other health insurance carrier.
- (6) Require, or grant a health insurance carrier an option to require, the provider to charge another health insurance carrier a rate that is equal to or more than the reimbursement rate specified in the contract."

SECTION 2. This act becomes effective October 1, 2013, and applies to contracts entered into, renewed, or amended on or after that date. Neither this act nor any legislative history of its passage shall be construed to affect any litigation pending at the time this act becomes effective.





HOUSE BILL 247: Freedom to Negotiate Health Care Rates

2013-2014 General Assembly

Committee:	Senate Insurance	Date:	April 23, 2013
Introduced by:	Reps. Burr, Starnes, Avila, McElraft	Prepared by:	Amy Jo Johnson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: *House Bill 247 would prohibit contract provisions that create specified rate negotiations between health benefit plans and health care providers.*

CURRENT LAW: G.S. 58-50-270 provides the following definitions that are applicable to this bill:

- Contract – an agreement between an insurer and a health care provider for the provision of health care services by the provider on a preferred or in-network basis.
- Health care Provider – an individual who is licensed, certified, or otherwise authorized under Chapter 90 or Chapter 90B of the General Statutes or under the laws of another state to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program and a facility that is licensed under Chapter 131E or Chapter 122C of the General Statutes and is owned or operated by the State in which health care services are provided to patients.

BILL ANALYSIS: House Bill 247 adds a new section to Part 7 of Article 50 of Chapter 58 of the General Statutes regarding contracts between health benefit plans and health care providers. The bill states that no contract for the provision of health care services can do any of the following:

- Prohibit the provider from contracting with another health carrier to provide services at a rate equal to or lower than the payment specified in the contract.
- Require the provider to accept a lower payment rate in the event that the provider agrees to provide services to any other carrier at a rate equal to or lower than that specified in the contract.
- Require termination or renegotiation of the contract if the provider agrees to provide services to any other carrier at a rate equal to or lower than that specified in the contract.
- Require the disclosure of the provider's contractual rates with another carrier.
- Require the non-negotiated adjustment by the issuer of the provider's contractual rate to equal the lowest rate the provider has agreed to charge another carrier.
- Require the provider to charge another carrier a rate that is equal to or greater than the rates specified in the contract.

EFFECTIVE DATE: This act becomes effective October 1, 2013, and applies to contracts entered into, renewed, or amended on or after that date. Neither this act nor any legislative history of its passage shall be construed to affect any litigation pending at the time this act becomes effective.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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1

SENATE BILL 615

Short Title: Property Insurance Fairness.

(Public)

Sponsors: Senators Brown (Primary Sponsor); Goolsby, Jackson, and Jenkins.

Referred to: Insurance.

April 4, 2013

A BILL TO BE ENTITLED
AN ACT TO INCREASE THE FAIRNESS AND EQUITY OF PROPERTY INSURANCE
RATE MAKING IN NORTH CAROLINA BY REQUIRING THAT CERTAIN
PROPERTY INSURANCE DATA BE MADE AVAILABLE TO THE PUBLIC; BY
PROVIDING THE COMMISSIONER WITH THE AUTHORITY TO ORDER A
DECREASE IN RATES IN A PROPERTY INSURANCE RATE-MAKING
PROCEEDING; BY LIMITING THE COMMISSION ON POLICIES ISSUED UNDER
THE BEACH PLAN TO TEN PERCENT; BY INCREASING THE BEACH PLAN'S
NONRECOUPABLE ASSESSMENT CAP; AND BY EXEMPTING PREMIUMS PAID
FOR BEACH PLAN POLICIES FROM THE GROSS PREMIUM TAX.

The General Assembly of North Carolina enacts:

PART I. PROPERTY INSURANCE CLARITY

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

"Part 9. Property Insurance Rate Clarity.

"§ 58-10-335. Title.

This Part is known and may be cited as the "Property Insurance Clarity Act."

"§ 58-10-340. Information submission and compilation: current year.

(a) Each insurer authorized to transact property insurance business in the State of North Carolina shall annually submit to the Department of Insurance, no later than April 1, computations of the total amount of direct incurred losses, the number of policies in force, and the direct earned premiums for the prior calendar year for all property insurance policies written by the insurer. The insurance company shall report the computations to the Department by rate territory. For purposes of this Part, property insurance shall also include condominium insurance, dwelling fire policies, renters or tenants insurance, and mobile home and manufactured housing property insurance. Condominium association insurance and commercial insurance are excluded from this Part.

(b) Each insurance company authorized to transact homeowners insurance business in the State shall annually submit to the Department, no later than April 1, computations of the direct incurred losses and the number of policies in force, by rate territory, for the prior calendar year for each of the following perils:

- (1) Fire.
- (2) All wind and hail.
- (3) All other perils.



(c) Each insurance company authorized to transact homeowners insurance business in the State shall submit to the Department catastrophe wind and hail information pursuant to a data call by the Department based on a specific catastrophic event.

(d) The information received by the Department under the submission requirements of this section shall be aggregated across all insurance companies collectively, arranged by rate territory, and posted to the Department's Web site no later than June 1 for the prior calendar year.

"§ 58-10-345. Submission of historical information.

No later than October 1, 2014, each insurer authorized to transact property insurance business in this State shall provide the information required pursuant to G.S. 58-10-340(a) for calendar years 2007 through 2012. Voluntary submissions of the information required by G.S. 58-10-340(a) for calendar years prior to 2007 may be submitted and shall be compiled and posted by the Department in the same manner. Based upon the submitted information, the Department shall compile aggregate totals, commencing with 2007, and post those aggregate totals on the Department Web site no later than December 1, 2014.

"§ 58-10-350. Waiver; sanctions.

(a) Upon written request of an insurer, the Commissioner may waive, modify, or extend for an additional time period, for good cause shown, the reporting requirements imposed by this act. The request shall demonstrate good cause for waiving, modifying, or extending the reporting requirements. Good cause may include, but is not limited to, the insurer's limited percentage of the total property insurance market in this State, or the undue burden of compiling and reporting the computations, data, and other information required by this act due to the manner, format, or method in which the insurer has stored the computations, data, or other information required.

(b) Any insurer that fails to timely comply with the reporting requirements imposed by this act shall be given notice by the Department of such failure and provided 90 days within which to comply. Any insurer that fails to comply on or before the 90th day shall pay, after notice and hearing, a civil penalty of two thousand five hundred dollars (\$2,500) per month to the Commissioner until the date of compliance. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"§ 58-10-355. Confidentiality of information.

Any information reported to the Department by an insurer pursuant to this act is considered a trade secret as defined in G.S. 66-152 and shall be treated as confidential information by the Department. However, once the information from all property insurers is aggregated, then the Department may provide such information in accordance with this Part. Notice of at least 10 business days shall be given to the insurer if confidential information pertaining to that insurer is ordered by a court of competent jurisdiction to be released by the Department."

PART II. AUTHORITY TO LOWER RATES

SECTION 2. G.S. 58-36.20 reads as rewritten:

"§ 58-36-20. Disapproval; hearing, order; adjustment of premium, review of filing.

(a) **At any time within 50 days after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent the Commissioner contends the filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice. Once begun, hearings must proceed without undue delay. At the hearing the burden of proving that the proposed rates are not excessive, inadequate, or unfairly discriminatory is on the Bureau. At the hearing the factors specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date**

thereafter, within a reasonable time, after which the filing shall no longer be effective. In the event the Commissioner finds that the proposed rates are excessive, the Commissioner shall ~~specify the overall rates, between the existing rates and the rates proposed by the Bureau filing, that may be used by the members of the Bureau instead of the rates proposed by the Bureau filing.~~ issue an order disapproving the filing and specifying the appropriate rate level or levels that may be used by the members of the Bureau instead of the rate level or levels proposed by the Bureau filing. In any such order, the Commissioner shall make findings of fact based on the evidence presented in the filing and at the hearing. Any order issued after a hearing shall be issued within 45 days after the completion of the hearing. If no order is issued within 45 days after the completion of the hearing, the filing shall be deemed to be approved.

...."

PART III. LIMIT AGENT'S COMMISSION

SECTION 3.1. G.S. 58-45-35 is amended by adding a new subsection to read:

"§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.

...

(f) The Association shall provide in its plan of operation that the commission rates to be paid to agents or brokers for policies issued under this section shall not exceed ten percent (10%) of written premium."

SECTION 3.2. No later than October 1, 2013, the North Carolina Insurance Underwriting Association shall amend its plan of operation as provided in G.S. 58-45-30 to implement Section 3.1 of this act.

PART IV. INCREASE NONRECOUPABLE ASSESSMENT CAP

SECTION 4. G.S. 58-45-47 reads as rewritten:

"§ 58-45-47. Deficit event.

(a) In the event of losses and expenses to the Association exceeding available surplus, reinsurance, and other sources of funding of Association losses, the Association is authorized to issue a nonrecoupable assessment upon its members in accordance with its Plan of Operation. Member assessments shall not exceed ~~one billion dollars (\$1,000,000,000)~~ one billion two hundred million dollars (\$1,200,000,000) for losses incurred from any event or series of events that occur in a given calendar year, regardless of when such assessments are actually levied on or collected from member companies.

(b) When the Association knows that it has incurred losses and loss expenses in a particular calendar year that will exceed the combination of available surplus, reinsurance, and other sources of funding, including permissible member company assessments, then the Association shall immediately give notice to the Commissioner that a deficit event has occurred.

(c) Upon a determination by the Association that a deficit event has occurred, the Association shall determine, in its discretion, the appropriate means of financing the deficit, which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit, or other forms of borrowing or financing. If the Association determines that the member companies have paid ~~one billion dollars (\$1,000,000,000)~~ one billion two hundred million dollars (\$1,200,000,000) in nonrecoupable assessments for losses and expenses incurred in any given year pursuant to subsection (a) of this section, the Association may, subject to the verification by the Commissioner that the dollar value of losses and expenses has reached the level necessary for a catastrophe recovery charge, authorize member companies to impose a catastrophe recovery charge on their residential and commercial property insurance policyholders statewide. Catastrophe recovery charges shall be charged as a uniform percentage of written premiums as prescribed by the Commissioner and shall not exceed an aggregate amount of ten percent (10%) of the annual policy premium on any one policy of insurance.

1 Catastrophe recovery charges collected under this section shall be transferred directly to the
2 Association on a periodic basis as determined by the Association and ordered by the
3 Commissioner. The Association and the FAIR Plan also shall charge their policyholders a
4 catastrophe recovery charge as provided in this section.

5"

7 PART V. EXEMPT BEACH PLAN FROM GROSS PREMIUM TAX

8 SECTION 5.1. G.S. 58-45-1 reads as rewritten:

9 "§ 58-45-1. Declarations and purpose of Article.

10 ...

11 (c) It is the intent of the General Assembly that except for ~~North Carolina gross~~
12 ~~premium taxes and~~ the fire and lightning tax, the activities of the Association be exempt from
13 State and federal taxation to the fullest extent permitted by law."

14 SECTION 5.2. G.S. 58-45-80 reads as rewritten:

15 "§ 58-45-80. ~~Premium taxes to be paid through Association.~~Exemption from premium
16 taxes.

17 All ~~premium taxes due on~~ insurance written under this Article shall be ~~remitted by each~~
18 ~~insurer to the Association; and the Association, as collecting agent for its member companies,~~
19 ~~shall forward all such taxes to the Secretary of Revenue as provided~~exempt from the gross
20 premium tax levied in Article 8B of Chapter 105 of the General Statutes."

21 SECTION 5.3. G.S. 105-228.5 reads as rewritten:

22 "§ 105-228.5. Taxes measured by gross premiums.

23 ...

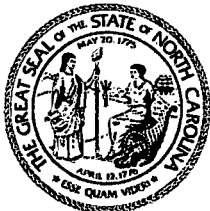
24 (g) Exemptions. – This section does not apply to any of the following:

- 25 (1) ~~farmers'~~Farmers' mutual assessment fire insurance ~~companies~~companies or
26 to
27 (2) ~~fraternal~~Fraternal orders or societies that do not operate for a profit and do
28 not issue policies on any person except members.
29 (3) Insurance policies written under Article 45 of Chapter 58 of the General
30 Statutes."

32 PART VI. MISCELLANEOUS PROVISIONS

33 SECTION 6.1. If any section or provision of this act is declared unconstitutional or
34 invalid by the courts, such action does not affect the validity of this act as a whole or any part
35 other than the part so declared to be unconstitutional or invalid.

36 SECTION 6.2. Section 1 of this act is effective when it becomes law and applies to
37 the 2013 calendar year. Part V of this act is effective for taxable years beginning on or after
38 July 1, 2013. The remainder of this act becomes effective July 1, 2013.



SENATE BILL 615: Property Insurance Fairness

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Brown
Analysis of: First Edition

Date: April 23, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *Senate Bill 615 makes the following changes to property insurance rate regulation: (1) requires insurers to report annually specific data on policies written and losses incurred by rate territory for posting by the Department on its website; (2) gives the Commissioner the authority, upon disapproval of a rate filing by the Rate Bureau, to order a decrease in rates from the existing rate; (3) limits agent's commission paid by the Beach Plan to 10% of written premium; (4) increases the cap on nonrecoupable assessments which may be assessed against insurers by the Beach Plan from \$1B to \$1.2B; and (5) exempts the Beach Plan from gross premium taxes paid by insurers.*

BILL ANALYSIS: Section 1 of Senate Bill 615 creates a new Part 9 in Article 10 of Chapter 58 entitled Property Insurance Rate Clarity. The new section would require each property insurer in the State to submit to the Department annually by April 1 of each year the following:

- Total amount of direct losses, the number of policies in force, and the direct earned premiums for the calendar year for all policies by rate territory.
- The direct incurred losses and number of policies in force by rate territory for each of the following perils:
 - Fire.
 - All wind and hail.
 - All other perils.
- Pursuant to a data call by the Department, wind and hail information on a specific catastrophic event.

The Department is required to aggregate and arrange the information by rate territory and post the information on the Department's website no later than June 1 of each year.

This section also requires the same data to be submitted by insurers for calendar years 2007 through 2012 and posted by the Department on its website. An insurer failing to comply with the reporting requirements is subject to payment of a civil penalty of \$2500 per month until the date of compliance. The Department may waive, for good cause shown, the reporting requirements under this section.

Information submitted by individual insurers under this section is confidential.

Section 2 gives the Commissioner the authority, upon disapproval of a rate filing by the Rate Bureau, to order a decrease in rates from the existing rate. Under current law, upon disapproval of a rate filing, the Commissioner may specify a rate between the existing rate and the rate proposed by the Bureau, but may not order a decrease in rates.

Section 3 of the bill would limit the agent's commission paid by the Beach Plan to 10% of written premium. Currently, agent's commission for most policies issued by the Beach Plan is 13%.

Section 4 would raise the nonrecoupable assessment cap which may be assessed by the Beach Plan against insurers to cover losses. Under current law, when losses to the Beach Plan exceed available



Senate Bill 615

Page 2

surplus, reinsurance, and other funding sources, insurers in the Beach Plan may be assessed up to \$1B to pay for losses incurred by the Plan. This assessment is nonrecoupable. If the assessment exceeds \$1B, the Plan may, subject to verification of the amount of losses and expenses by the Commissioner, institute a catastrophe recovery charge on residential and commercial policyholders statewide to finance the remaining losses. The charge, as prescribed by the Commissioner, shall not exceed an aggregate amount of 10% of the annual policy premium on any one policy of insurance. **Section 4** of the bill would increase the nonrecoupable assessment which may be assessed against insurers from \$1B to \$1.2B.

Sections 5.1, 5.2, and 5.3 of the bill would exempt the Beach Plan from gross premium taxes paid by insurers. According to the Beach Plan, it paid approximately \$9M in premium tax for calendar year 2012.

EFFECTIVE DATE: Section 1 of the act is effective when the bill becomes law and applies to the 2013 calendar year. Sections 5.1 through 5.3 are effective for taxable years beginning on or after July 1, 2013. The remaining provisions of Senate Bill 615 become effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 690*

Short Title: Property Insurance Rate-Making Reform.

(Public)

Sponsors: Senators Sanderson, Cook (Primary Sponsors); Goolsby and Jenkins.

Referred to: Insurance.

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FAIRNESS AND EQUITY OF THE PROPERTY INSURANCE RATE-MAKING PROCESS BY PROVIDING FOR GREATER TRANSPARENCY REGARDING THE ROLE OF CATASTROPHE MODELING IN PROPERTY INSURANCE RATE FILINGS; AND BY PROVIDING THAT COSTS OF REINSURANCE INCLUDED IN A PROPERTY RATE FILING BE PROPERLY ALLOCABLE TO NORTH CAROLINA; AND BY ESTABLISHING A TWO-TIERED RATE THAT PROVIDES FOR A STATEWIDE RATE AND AN ADDITIONAL CATASTROPHE RATE BASED ON ACTUAL HISTORICAL LOSSES AS WELL AS CATASTROPHE MODELING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-10 reads as rewritten:

"§ 58-36-10. Method of rate making; factors considered.

The following standards shall apply to the making and use of rates:

(3) In the case of property insurance rates under this Article, consideration ~~may~~shall be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. If the Rate Bureau presents any modeled hurricane losses based upon a commercial hurricane simulation computer model with a property insurance rate filing, the Bureau shall present data from more than one such model.

...."



SECTION 2. G.S. 58-36-15 reads as rewritten:

"§ 58-36-15. Filing loss costs, rates, plans with Commissioner; public inspection of filings.

...

(d2) The following supporting data, at a minimum, shall be included in any property insurance rate filing where a catastrophe model is used:

(1) Any simulated loss from a catastrophe model should include the following:

a. An event identifier.

b. The simulation year.

c. The State and county of first landfall, and the wind speed, based upon the Saffir-Simpson scale, at landfall.

d. The gross amount of North Carolina damages before application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.

e. The net amount of North Carolina insured loss after application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.

f. Any other information required by rules promulgated by the Commissioner.

(2) Annual historical exposure and hurricane loss data by territory for 1987 and each subsequent year.

(3) If requested by the Department, a statistical analysis comparing the historic loss data required by subdivision (2) of this subsection with any simulated losses used to support the rate filing.

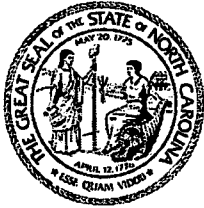
(d3) With respect to property insurance rate filings, the Bureau, no later than January 1, 2015, shall transition to a two-tier system for filings for policies issued or renewed after that date. A policy holder's total rate for property insurance shall be the sum of the two rate tiers meeting all of the following requirements:

(1) The first rate tier shall be set on a statewide basis, based on consideration of all risks with the exception of catastrophe-related wind and hail peril. This tier shall be designated and set forth separately in all property insurance premium communications with insured parties as the "Statewide Noncatastrophe Premium." Territorial exceptions to the statewide rate will be permitted if there is credible data supporting a rate differential of at least fifteen percent (15%) from the statewide rate.

(2) The second rate tier will present the rate proportion needed on a regional basis to cover the costs of reinsurance and the risks for catastrophe-related wind and hail peril. This tier shall be designated and set forth separately in all property insurance premium communications with insured parties as the "Catastrophe Premium."

...."

SECTION 3. This act becomes effective July 1, 2013.



SENATE BILL 690: Property Insurance Rate-Making Reform

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sens. Sanderson, Cook
Analysis of: First Edition

Date: April 23, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *Senate Bill 690 makes the following changes to the law governing property insurance rate filings: (1) provides that the consideration must be given (currently, may) to property insurance business experience during the most recent five-year period for which experience is available; and (2) requires the Bureau to submit data from more than one model and to provide specific information detailing the model's simulated loss and comparing the simulated loss to historical losses.*

The bill also requires the Bureau to transition to a two tier filing and rating system with a first tier based on a statewide "noncatastrophe premium" and a second tier regional "catastrophe premium." The regional catastrophe premium covers the costs of reinsurance and risks for catastrophe-related wind and hail.

[As introduced, this bill was identical to H519, as introduced by Reps. Tine, Dockham, Hamilton, Iler, which is currently in House Insurance.]

CURRENT LAW: Article 36 of Chapter 58 requires the N.C. Rate Bureau to file with the Commissioner for approval the proposed rates and rating plans for insurance against loss to residential real property. The State is divided into 18 separate territories for the purposes of property insurance rate-making. The burden of proving that a proposed rate meets the necessary standard of not being "excessive, inadequate, or unfairly discriminatory" is on the Rate Bureau. When deciding upon a rate, due consideration must be given to a number of factors including actual and prospective loss and expense experience within the State, the hazards of catastrophe, and a reasonable margin for underwriting profit.

BILL ANALYSIS: Section 1 of Senate Bill 690 would require that consideration be given to the experience of property insurance business during the most recent five-year period for which experience is available when setting property insurance rates. Current law allows but does not require that consideration be given to this experience.

Section 1 also requires the Rate Bureau to submit data from more than one catastrophe model in a rate filing, if modeled losses are used.

Section 2 would add new language to G.S. 58-36-15 governing rate filings to require any simulated loss from a catastrophe model to include specific information such as annual probability, the amount of N.C. damages before and after the application of any deductible, specific information concerning first N.C. landfall or entry, wind speed, and other information. The Bureau would also be required as part of a model's supporting data to provide the actual annual historical exposure and hurricane loss data by territory for 1987 and each subsequent year and, if requested by the Department, a statistical analysis comparing the historic data with any simulated losses from the catastrophe model.

Section 2 adds language to require the Bureau to transition beginning January 1, 2015 to a two-tier system for rate filing for policies issued or renewed after that date. Rates shall be the sum of the following:

O. Walker Reagan
Director



Research Division
(919) 733-2578

Senate Bill 690

Page 2

- A first rate tier set on a statewide basis based on all risks with the exception of catastrophe-related wind and hail, designated as the "Statewide Noncatastrophe Premium." Territorial exceptions to the statewide rate are allowed if credible data supports a rate differential of at least 15% from this rate.
- A second rate tier showing the rate proportion needed on a regional basis to cover the costs of reinsurance and the risks for catastrophe-related wind and hail, designated as the "Catastrophe Premium."

EFFECTIVE DATE: Senate Bill 690 would become effective July 1, 2013.

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 24, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Tina Givens	NC Realtors Elizabeth City, NC CIA Realty, LLC
Jerry Eury	NC AR Washington, NC Century 21 The Realty Group
Jamie Couper	Jacksonville BOR - Jacksonville NC
Barbara Canavan	Jacksonville Board of Realtors - Pres. - Elect Barbara Canavan Realty
Cindy T Small	Albemarle Area Assoc of Realtors Cindy Thibault, Sotheby's Realty, Edenonton
Chuck Stone	SEAR
NAN McLENDON	WBOR - WASHINGTON, NC - PRES. Elect THE RICH CO. - 1408 Carolina Ave 27889
STARLON CREDLE	WBOR - NCAR WASHINGTON NC
Adam Kiefer	Jacksonville Board of Realtors Legislative Chair
ROYCE BENNETT	NCAR, JACKSONVILLE NC
Colleen Shriver	OBAR, Outer Banks, NC

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 24, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Lma Schwitzgebel	NCIUA / NCJUA
Alli Anworth	NCIUA / NCJUA
Andrew Blackburn	SSG-NC
Deanna McDaniel	Surf or Sound Realty
Sherry Schwentker	Surf or Sound Realty
Carolyn Hickok	Elan Real Estate (OBX)
Monica Thibodeau	Carolina Designs Realty, Duck
Mary Beth	AARP-NC
Sally S	YWP
Amy Whited	NC med soc
Janice Hassell	NC REALTORS

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 24, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME

FIRM OR AGENCY AND ADDRESS

Robert Raschel

Young Moore

REBECCA WILLIAMS

NC RATE BUREAU

Jeff TINDALL

CIGNA

Monteagan

NMRS

Jay Peters

CSS

JAY PETERS

CSS

Cindy Edwards

Outer Banks Realtor Association

Brian Donlan

Allstate

Shantelle Thomas

Allstate

Bill Trott

Young Moore

Tim Lucas

NC Rate Bureau

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 24, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME

FIRM OR AGENCY AND ADDRESS

KIMBELLY ENDRE	OBALE NCAR Outer Banks Blue Realty, K4 NC
Michael Davenport	Outer Banks REALTORS
Michelle Frazier	MFS
John McMillan	"
David Rice	"
John Hardin	"
Lori Anderson	LATTA

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 24, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Shirley Brunkley	OBAR
LAKE PARKER	NCFB
Roger Baldoff	NCFB
Kelley Gostine	ITANU
John T. Bode	BCS
Harry Kyle	MWC
Susan Valmuri	NW
David Spollen	STATE FARM
DOUG HERON	WILLIAMS MILLER
Christine Craig	Wakemed
EDAS ZEMATTIS	OBAR

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 24, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
T Friedman	DST
Fred Fuller	NCDOI
Kevin Carley	NCDAI
Sherri Hubbard	NC DOT
Bryan Heekle	NCDOI
Willie Kelly	OBAR/ NC 20.
Bob Mack	NCDOI
Rosemarie Doshier	OBAR
Jackie Sample	OBAR
John Amrhein sr	OBAR
Delphine Amrhein	OBAR

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 24, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Ken Lewis	First Coastal Care
Kathleen Hickey	Wilm Regional Assoc. Realtors
RAY EVANS	NC RATE BUREAU
Mickey Spirey	Young Moore and Henderson
Sue Taylor	NC Rate Bureau
Ryan Magnuson	BASE / WCFHSA
Sarah Wolfe	MWC LLC
SAND Byers	Outer Banks Ass. of Realtors
Becky Smith	Sun Realty - Nags Head N.C.
Sum Vick	FSP
Lamie Anand	FSP

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

April 24, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Ali Breyer	OBAR / NCAR
Wilson Sherrill	BCAR
Dominic Pulvisnik	NCAR
Toni Parker	OBAR (Outer Banks Assoc. of REALTORS)
LARA Cieszko	NRPAR
Sara Fender	IFNC
Dave Lenosok	NCAR
Chris Volanti	Takeda Pharmaceuticals
Jones Smith	~~Indecor~~
Careen Mann	RBE
Kay Palsay	NASW, NC

SENATE PAGES ATTENDING

COMMITTEE: Insurance ROOM: 1027

DATE: 4-24 TIME: 10^{AM}

PLEASE PRINT LEGIBLY!!!!!!!!!!!!!!.....or else!

Page Name	Hometown	Sponsoring Senator
1. Briggs Manness	Tryon	Hise
2. Natalie Brown	Mount Olive	Pate
3. Ron Davenport	Clayton	Jackson
4. Nic Carroll	Wilmington	Goolsby
5.		
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Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

**Senate Committee on Insurance
Wednesday, May 8, 2013, 10:00 AM
1027/1128 Legislative Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 475	PEO Act Amendments.	Senator Meredith
SB 477	No Set Fee/Noncovered Vision Services.	Senator Meredith Senator Newton Senator Walters
SB 556	Wind Up High Risk Health Insurance Pool.	Senator Hise
SB 614	WC/Omnibus Changes.	Senator Brown
SB 690	Property Insurance Rate- Making Reform.	Senator Sanderson Senator Cook

**Senate Committee on Insurance
Wednesday, May 8, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building**

MINUTES

The Senate Committee on Insurance met at 10:00 AM on May 8, 2013 in Room 1027/1128 of the Legislative Building. Eight members were present.

Senator Tom Apodaca, Chair, presided.

John Fasterling from Laurinburg, Donald Kernodle from Burlington, John Kernodle from Burlington, Brandon O'Dell from Spring Lake and Chad Lee II from Greensboro served as pages.

Senator Apodaca chose to hear the bills out of order and due to time constraints SB556 *Wind Up High Risk Health Insurance Pool* was not heard. The bills in order heard are as follows:

S. B. 614 WC/Omnibus Changes

Senator Apodaca asked Peter Ledford an attorney from the Research Division to explain the bill. Senate Bill 614 would make changes to the procedure an insurer must follow to cancel a workers' compensation insurance policy. The bill would also amend the Workers' Compensation Act to make changes to the provisions applying to determining whether tractor trailer drivers are employees or independent contractors and, if they are independent contractors, how they may be covered by the employer's workers' compensation coverage. The bill would also make changes to the section of the Workers' Compensation Act covering injuries occurring in other states and establish procedures for determining which state's laws apply when there is a dispute. Senator Apodaca then introduced R. Palmer Sugg/Attorney at Law from Broughton, Wilkins, Webb and Sugg, P.A. to speak. Mr. John McMillan from the American Insurance Association also spoke. It was by the decision of the chair to pull the bill from further discussion and to move it to the next meeting.

S. B. 475 PEO Act Amendments

Senator Gunn moved to adopt the proposed committee substitute (PCS) before the committee and it carried. The proposed committee substitute for Senate Bill 475 makes the following changes to the Professional Employer Organization (PEO) Act: (1) rewrites the definition of "hazardous financial condition" applicable to PEO license applicants; (2) sets the bond requirement for licensure applicants at \$100,000; (3) deletes requirement to provide notice of the effects of a PEO agreement to employees assigned to a client company; (4) makes changes concerning the rights of a PEO and client company to control, hire, discipline, and terminate assigned employees; (5) repeals statute giving Commissioner authority to conduct examination of licensees; and (6) repeals provision giving Commissioner authority to discipline a licensee who, as an insurance fiduciary, willfully fails to give notice of group health or life insurance plan

termination. Senator Meredith was introduced and asked Rose Vaughn Williams/Legislative Counsel for the North Carolina Department of Insurance and Doug Miskew from the Public Sector Group. Before they spoke respectively, Tim Hovis an attorney from the Research Department was asked to explain the bill. Ms. Vaughn Williams and Mr. Miskew offered handouts to the committee. George Gersema from Employers Resource by the suggestion of Mr. Miskew spoke to the committee. Adam S. Peer/Director of State Government Affairs for the National Association of Professional Employer Organizations also spoke. It was suggested by Senator Apodaca that the opposing parties meet with Senator Meredith to hopefully make amendments and bring it before the committee next week.

S. B. 477 No Set Fee/Noncovered Vision Services

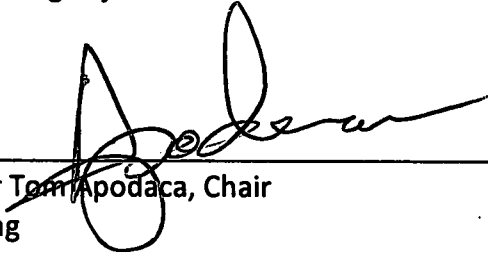
Senator Meredith was introduced to speak on the bill. Senate Bill 477 would prohibit agreements between an ophthalmologist or optometrist and an insurer or an entity that writes vision insurance that limit fees for vision services unless the services or materials are reimbursed as covered services under the contract. Amy Jo Armstrong an attorney from the Research Division assisted with the explanation and responses to the members. Senator McLaurin asked that an amendment be considered to remove the word ophthalmologist from the bill and it carried. Ms. Armstrong drafted the amendment during the committee. Senator Apodaca opened the floor for guests to speak. The speakers are as follows and spoke in the respective order: William G. Scoggin from Troutman Sanders, Dr. Thomas Aakers, II from Rocky Mount and Harrison J. Kaplan/Senior vice President and Director for McGuireWoods Consulting. Senator Meredith suggested issues that the committee move the bill and that opposing groups could meet and draft an amendment for the floor. Senator Apodaca offered an amendment. Senator Hise moved to adopt it and it carried. Senator Hise moved – unfavorable to the bill, favorable to the PCS as amended. Senator Apodaca stated that the bill will be held on the floor until Senator Meredith and Senator McKissick can prepare an amendment to be offered during session.

S. B. 690 Property Insurance Rate-Making Reform

Senator Gunn moved to adopt the proposed committee substitute (PCS) before the committee and it carried. The proposed committee PCS for Senate Bill 690 makes the following changes to the law governing property insurance rate filings: (1) requires the Rate Bureau to submit data from more than one model if modeled losses are used; and (2) requires supporting data specific to North Carolina be included in a rate filing when a catastrophe model is used. Each filing must also include annual historical loss data by territory for 1987 and each subsequent year. The bill also requires property insurers to designate that portion of a premium based on fire and nonwind and hail perils and that portion based on wind and hail in all premium communications with policyholders. Senator Sanderson was introduced to speak on the bill. Tim Hovis an attorney from the Research Division assisted with the explanation and responses to the members. Senator Apodaca asked the visitors if there was anyone present from the North Carolina Rate Bureau. Raymond F. Evans, Jr., CPCU/General Manager spoke. Senator

Apodaca then suggested that Senator Sanderson, Senator Hise and Senator Ford work on this in more detail before this bill moves forward.

The meeting adjourned at 11:00 AM.



Senator Tom Apodaca, Chair
Presiding



Debbie Lown, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

Thursday, May 09, 2013

Senator Apodaca,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

SB 477

No Set Fee/Noncovered Vision Services.

Draft Number: S477-PCS35338-TK-29

Sequential Referral: None

Recommended Referral: None

Long Title Amended: Yes

TOTAL REPORTED: 1

Senator Wesley Meredith will handle SB 477



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

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SENATE BILL 614

Short Title: WC/Omnibus Changes.

(Public)

Sponsors: Senators Brown (Primary Sponsor); and Jackson.

Referred to: Insurance.

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE INSURANCE LAWS RELATING TO THE NOTICE
REQUIRED FOR CANCELLATION OF WORKERS' COMPENSATION INSURANCE
POLICIES AND TO AMEND THE WORKERS' COMPENSATION ACT
CONCERNING THE STATUS OF TRUCK DRIVERS AS EMPLOYEES OR
INDEPENDENT CONTRACTORS AND RELATING TO OUT-OF-STATE
ACCIDENTS AND STATE RECIPROCITY OF CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-36-105(b) reads as rewritten:

"(b) Any cancellation permitted by subsection (a) of this section is not effective unless written notice of cancellation has been given by registered or certified mail, return receipt requested, to the insured not less than 15 days before the proposed effective date of cancellation. The notice shall be given by registered or certified mail, return receipt requested, to the insured and any other person designated in the policy to receive notice of cancellation at their addresses shown in the policy or, if not indicated in the policy, at their last known addresses. The notice shall state the precise reason for cancellation. Whenever notice of intention to cancel is required to be given by registered or certified mail, no cancellation by the insurer shall be effective unless and until such method is ~~employed and completed.~~ employed. Failure to send this notice, as provided in this section, to any other person designated in the policy to receive notice of cancellation invalidates the cancellation only as to that other person's interest."

SECTION 1.(b) This section is effective when it becomes law and applies to insurance policies in effect on or after that date.

SECTION 2.(a) G.S. 97-19.1 reads as rewritten:

"§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.

(a) An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer ~~licensed by a governmental motor vehicle regulatory agency for a motor carrier as defined by G.S. 20-4.01(21b)~~ may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer ~~licensed by the United States Department of Transportation for a motor carrier as defined in G.S. 20-4.01(21b)~~ and who has not secured the payment of compensation in the manner



provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate contractor, or subcontractor shall not be liable as an employer under this Article for the payment of compensation on account of the injury or death of the independent contractor if the principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent contractor who is an individual licensed by the United States Department of Transportation and owns or leases the vehicle providing service, (ii) the independent contractor personally operates or is responsible for hiring or engaging and paying personnel who operate the vehicle, and is operating the vehicle solely pursuant to that license, (iii) the independent contractor is covered under an occupational accident policy either issued to the independent contractor or motor carrier.

(c) A motor carrier and an independent contractor meeting the criteria contained in subsection (b) of this section may, if mutually agreed to by the independent contractor and motor carrier in writing, provide that the independent contractor and any of the independent contractor's employees be covered by the motor carriers' workers' compensation insurance policy or self-insurance and that the independent contractor and any of the independent contractor's employees would be deemed employees of the motor carrier for purposes of workers' compensation only. The motor carrier may charge the independent contractor for any agreed upon premiums or, if self-insured, for any equitable assessment for such coverage. The agreement shall not affect the independent contractor status of the independent contractor for any purpose other than for workers' compensation.

(d) For purposes of this section, the term "occupational accident insurance" means the type of insurance policy obtained by independent contractor owners-operators in the trucking industry that includes the following benefit categories: (i) temporary total disability-type wage replacement benefit, (ii) permanent disability or impairment benefit, (iii) a medical expense payment benefit, and (iv) a death benefit. The occupational accident insurance policy may be issued directly to the independent contractor owner-operator or issued as a master policy for which the motor carrier may charge the independent contractor owner-operator an equitable sum for the coverage. The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

~~A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business."~~

SECTION 2.(b) This section is effective when it becomes law.

SECTION 3.(a) G.S. 97-36 reads as rewritten:

"§ 97-36. **Accidents taking place outside State; employees receiving compensation from another state; state; reciprocity.**

(a) Where an accident happens while the employee is employed elsewhere than in this State and the accident is one which would entitle ~~him or his~~ the employee or the employee's dependents or next of kin to compensation if it had happened in this State, then the employee or ~~his~~ the employee's dependents or next of kin shall be entitled to compensation (i) if the contract of employment was made in this State, (ii) if the employer's principal place of business is in

1 this State, or (iii) if the employee's principal place of employment is within this State; provided,
2 however, that if an employee or his dependents or next of kin shall receive compensation or
3 damages under the laws of any other state nothing herein contained shall be construed so as to
4 permit a total compensation for the same injury greater than is provided for in this Article.

5 (b) If an employee in this State temporarily leaves the State incidental to the employee's
6 employment and receives an accidental injury arising out of and in the course of the
7 employment, then the employee, or beneficiaries of the employee if the injury results in death,
8 must file their claim for compensation in this State subject to the terms of any choice of forum
9 clause contained in the employee's employment contract. If there is no choice of forum clause
10 in the employment contract, then the other provisions in this section shall apply.

11 (c) An employee from another state and the employer of the employee in the other state
12 are exempt from the provisions of this Chapter while the employee is working temporarily in
13 this State only if all of the following conditions are met:

14 (1) The employer has furnished workers' compensation insurance coverage
15 under the workers' compensation insurance or similar laws of the other state
16 to cover the employee's employment while in this State.

17 (2) The extraterritorial provisions of this Chapter are recognized in the other
18 state.

19 (3) Employees and employers who are covered in this State are likewise
20 exempted from the application of the workers' compensation insurance or
21 similar laws of the other state.

22 (d) The benefits under the workers' compensation insurance or similar laws of the other
23 state, or other remedies under similar law, are the exclusive remedies against the employer for
24 any injury, whether resulting in death or not, received by the employee while working
25 temporarily for that employer in this State.

26 (e) A certificate from the governmental entity or duly authorized officer or person of
27 another state certifying that the employer from the other state is insured in that state and has
28 provided extraterritorial coverage insuring employees while working in this State is prima facie
29 evidence that the employer carries that workers' compensation insurance.

30 (f) Whenever in any appeal or other litigation the construction of the laws of another
31 jurisdiction is required, the court shall take judicial notice of such construction of the laws of
32 the other jurisdiction.

33 (g) The Industrial Commission may enter into an agreement with the workers'
34 compensation agency of any other state relating to conflicts of jurisdiction where the contract
35 of employment is in one state and the injuries occur in the other state or where there is a dispute
36 as to the boundaries or jurisdiction of the states. When such an agreement has been duly
37 executed and made public by the respective state agencies, then (i) the rights of employees who
38 are hired in the other state and injured while working temporarily in this State or hired in this
39 State and injured while working temporarily in the other states and (ii) when claims arise where
40 jurisdiction is otherwise uncertain, the rights of employees shall be determined pursuant to the
41 agreement and confined to the jurisdiction provided in the agreement.

42 (h) When an employee has a claim under the workers' compensation law of another
43 jurisdiction for the same injury or occupational disease as the claim filed in this State, the total
44 amount of compensation paid or awarded under the other workers' compensation law shall be
45 credited against the compensation due under the North Carolina Workers' Compensation Act.

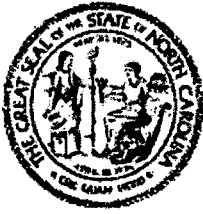
46 (i) The following definitions apply in this section:

47 (1) Jurisdiction or state. – Includes a territory, province, or foreign nation.

48 (2) Working temporarily. – When an employee is working for his or her
49 employer for no more than 10 consecutive days or for no more than 25 total
50 days during a calendar year in a state other than the state where the
51 employee is primarily employed."

1 **SECTION 3.(b)** This section is effective when it becomes law and applies to
2 claims for workers' compensation insurance benefits made on or after that date regardless of the
3 date of the accident.

4 **SECTION 4.** This act is effective when it becomes law.



SENATE BILL 614: WC/Omnibus Changes

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Brown
Analysis of: First Edition

Date: May 7, 2013
Prepared by: Peter Ledford
Committee Counsel

SUMMARY: *Senate Bill 614 would make changes to the procedure an insurer must follow to cancel a workers' compensation insurance policy. The bill would also amend the Workers' Compensation Act to make changes to the provisions applying to determining whether tractor trailer drivers are employees or independent contractors and, if they are independent contractors, how they may be covered by the employer's workers' compensation coverage. The bill would also make changes to the section of the Workers' Compensation Act covering injuries occurring in other states and establish procedures for determining which state's laws apply when there is a dispute.*

CURRENT LAW: G.S. 58-36-105(a) provides a list of reasons for which a workers compensation policy may be cancelled by the insurer before the expiration of its term and without the prior written consent of the insured. G.S. 58-36-105(b) requires that an insurer give written notice of cancellation stating the precise reason for cancellation to the insured and any other person designated in the policy to receive notice of cancellation by registered or certified mail, return receipt requested, not less than 15 days before the effective date of cancellation. The cancellation is not effective unless the prescribed method is employed and completed.

G.S. 97-19.1 establishes the procedure by which it is determined whether the driver of a tractor trailer is an employee of a business or an independent contractor. The statute establishes that a principal contractor, intermediate contractor, or subcontractor is not liable as an employer under the Workers' Compensation Act if (i) the independent contractor is licensed by the United States Department of Transportation and (ii) the independent contractor is personally operating the vehicle pursuant to that license. The statute also establishes that a principal contractor, intermediate contractor, or subcontractor may insure independent contractors and their employees or subcontractors under a blanket policy, and when insured, these individuals will be entitled to compensation benefits. Contracts with independent contractors may also include an agreement for the independent contractor to reimburse the cost of covering his or her business.

G.S. 97-36 establishes that an employee, the employee's dependents, or the employee's next of kin may receive workers compensation benefits for an accident occurring outside the State that would have been covered had it occurred in the State if (i) the employment contract was made in the State, (ii) the employer's principal place of business is in the State, or (iii) if the employee's principal place of employment is in the State. This section does not apply if the employee, the employee's dependents, or the employee's next of kin receives compensation or damages under the laws of any other state.

BILL ANALYSIS: Section 1 of Senate Bill 614 would amend the process by which a workers' compensation insurance policy is cancelled. Existing law dictates that cancellation is not effective unless the above mentioned method is employed and completed. Section 1 would amend this provision to provide that cancellation is not effective unless the prescribed method is employed.

Section 2 of Senate Bill 614 would amend G.S. 97-19.1(a) to clarify that the section applies to motor carriers, as that term is defined elsewhere in the General Statutes. This section would also amend G.S. 97-19.1(b) to establish that a principal contractor, intermediate contractor, or subcontractor is not



Senate Bill 614

Page 2

liable as an employer under the Workers' Compensation Act if (i) the independent contractor owns or leases the vehicle providing service, (ii) the independent contractor is personally operating the vehicle or is responsible for hiring or engaging and paying the person who operates the vehicle, and (iii) the independent contractor is covered under an occupational accident policy issued to the independent contractor or motor carrier. This section removes the provision in G.S. 97-19.1(c) relating to coverage of independent contractors under a blanket policy. In its place, a motor carrier and an independent contractor would be permitted to agree in writing that the independent contractor and any of its employees would be covered by the motor carrier's workers' compensation policy, and that the motor carrier may be permitted to charge the independent contractor for such coverage. Such an agreement would deem the independent contractor and its employees as employees of the motor carrier for purposes of workers compensation only, and it would not affect the independent contractor's status for any other purposes.

Section 3 of Senate Bill 614 would amend current law to make it gender neutral, and adds eight new subsections as follows:

Subsection (b) would establish that a choice of forum clause in an employment contract would control where a claim is filed if an employee is injured while temporarily out of the State.

Subsection (c) would exempt employees and employers from other states from the Workers' Compensation Act if an employee is working temporarily in the State and if (1) the employer has workers' compensation coverage under the laws of the other state to cover the activities in the State, (2) the extraterritorial provisions of the Workers' Compensation Act are recognized in the other state, and (3) employees and employers covered in the State are exempted from the workers compensation laws of the other state.

Subsection (d) would establish that under these circumstances, the laws of the other state are the exclusive remedies of the employee against the employer.

Subsection (e) would establish that a certificate from the proper authority in another state certifying that an employer is insured in that state and has provided extraterritorial coverage to insure employees working in the State is prima facie evidence that the employer carries workers' compensation coverage.

Subsection (f) would establish that when the construction of the laws of another jurisdiction is required during litigation, the judge shall take judicial notice of the construction of such laws.

Subsection (g) would authorize the Industrial Commission to enter into agreements with workers' compensation agencies in other states regarding conflicts of jurisdiction. When such an agreement has been executed, then the rights of employees shall be determined pursuant to the agreement.

Subsection (h) would require that an employee's claim under the workers' compensation laws of another jurisdiction for the same injury or occupational disease be credited against the compensation due under the Workers' Compensation Act.

Subsection (i) would establish definitions for the section.

EFFECTIVE DATE: Section 1 of this act is effective when it becomes law, and applies to insurance policies in effect on or after that date. Section 2 of this act is effective when it becomes law. Section 3 of this act is effective when it becomes law, and applies to claims for workers' compensation insurance benefits made on or after that date, regardless of the date of the accident.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 475

Short Title: PEO Act Amendments.

(Public)

Sponsors: Senator Meredith (Primary Sponsor).

Referred to: Insurance.

March 28, 2013

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS TECHNICAL, CLARIFYING, AND OTHER CHANGES
TO THE PROFESSIONAL EMPLOYER ORGANIZATION STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-5 reads as rewritten:

"§ 58-89A-5. Definitions.

In this Article:

...

(8) "~~Hazardous financial condition~~" ~~has the same meaning as in G.S. 58-47-60(9)~~ means inability by an applicant for an original or renewal license to demonstrate a net worth of at least fifty thousand dollars (\$50,000). For purposes of this definition, the applicant shall demonstrate net worth by providing the Department with the applicant's audited financial statements. The net worth requirement also may be satisfied through guarantees, letters of credit, or other security acceptable to the Department.

...."

SECTION 2. G.S. 58-89A-50 reads as rewritten:

"§ 58-89A-50. Surety bond; letter of credit; other deposits.

(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner as follows:

(1) ~~If the applicant was initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in the amount of one hundred thousand dollars (\$100,000).~~

(2) ~~If the applicant was not initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in an amount equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may require.~~

bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred thousand dollars (\$100,000) for the benefit of the Commissioner.

(b) The surety bond required by this section shall be in a form acceptable to the Commissioner, issued by an insurer authorized by the Commissioner to write surety business in this State, and maintained in force while the license remains in effect or any obligations or



liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond meets the requirements of this section, and (iii) 90 days' advance written notice is provided to the Commissioner.

~~(d) A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.~~

...."

SECTION 3. G.S. 58-89A-60(b) reads as rewritten:

"(b) Every applicant shall file with the Commissioner evidence of financial responsibility. Evidence of financial responsibility includes an audited GAAP financial statement, prepared as of a date not more than 90 days before the date of application that demonstrates that the applicant or licensee ~~is not in a hazardous financial condition~~ meets financial qualifications as specified by the Commissioner and attached to which is a separate document signed by the chief executive and the chief financial officer certifying that (i) each has reviewed the financial statement; (ii) based on each signatory's knowledge, the financial statement does not contain any untrue or misleading statement of material fact or omit a fact with respect to the period covered by the financial statement; and (iii) based on each signatory's knowledge, the financial statement fairly presents in all material respects the financial condition of the licensee as of, and for, the period presented in the financial statement.

Notwithstanding the requirements of this subsection, the Commissioner may, in the Commissioner's discretion, accept an audited GAAP financial statement that has been prepared more than 90 days before submission to the Commissioner if the Commissioner deems such acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose conditions upon such acceptance of financial statements prepared more than 90 days prior to submission."

SECTION 4. G.S. 58-89A-95 reads as rewritten:

"§ 58-89A-95. Agreement; notice. Agreement.

(a) A licensee shall establish the terms of a PEO agreement by a written contract between the licensee and the client company.

~~(b) The licensee shall give written notice of the agreement, by agreement or otherwise, as it affects assigned employees to each employee assigned to a client company work site. This written notice shall be given to each assigned employee not later than the first payday after the date on which that individual becomes an assigned employee.~~

~~(c) The licensee shall give each employee written notice when the employee ceases to be an employee of the licensee."~~

SECTION 5. G.S. 58-89A-100 reads as rewritten:

"§ 58-89A-100. Contract requirements.

A contract between a licensee and a client company shall provide:

- (1) ~~That the licensee reserves a right of direction and control over employees assigned to a client company's work sites. However, a client company may retain such sufficient direction and control over the assigned employees as is necessary to conduct the client company's business and without which the client company would be unable to conduct its business, to discharge any fiduciary responsibility that it may have, or to comply with any applicable licensure, regulatory, or statutory requirement of the client company. The PEO agreement shall provide that employment responsibilities not allocated to the licensee by the PEO agreement or this section remain with the client company.~~

- 1 (2) That the licensee assumes responsibility for the payment of wages to the
2 assigned employees as agreed to in the PEO agreement.
3 (3) That the licensee assumes responsibility for the payment of payroll taxes and
4 collection of taxes from payroll on assigned employees.
5 ~~(4) That the licensee reserves a right to hire, fire, and discipline the assigned~~
6 ~~employees.~~
7 (5) That the licensee retains a right of direction and control over the adoption of
8 employment policies and the management of workers' compensation claims,
9 claim filings, and related procedures in accordance with applicable federal
10 laws and the laws of this State.
11 (6) That responsibility to obtain workers' compensation coverage for assigned
12 employees, from an entity authorized to do business in this State and
13 otherwise in compliance with all applicable requirements, shall be
14 specifically allocated in the PEO agreement to either the client company or
15 the licensee. If the responsibility is allocated to the licensee under any such
16 agreement, that agreement shall require that the licensee maintain and
17 provide to the client company, at the termination of the agreement if
18 requested by the client company, records regarding the loss experience
19 related to workers' compensation insurance provided to assigned employees
20 pursuant to the agreement."

21 **SECTION 6.** G.S. 58-89A-145 is repealed.

22 **SECTION 7.** G.S. 58-89A-155(a)(4) is repealed.

23 **SECTION 8.** This act becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 475
PROPOSED COMMITTEE SUBSTITUTE S475-CSRG-5 [v.2]

5/7/2013 6:30:04 PM

Short Title: PEO Act Amendments.

(Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS TECHNICAL, CLARIFYING, AND OTHER CHANGES
TO THE PROFESSIONAL EMPLOYER ORGANIZATION STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-5 reads as rewritten:

"§ 58-89A-5. Definitions.

In this Article:

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(8) "Hazardous financial condition" ~~has the same meaning as in~~
~~G.S. 58-47-60(9). means inability by an applicant for an original or renewal~~
~~license to demonstrate a net worth of at least fifty thousand dollars~~
~~(\$50,000). For purposes of this definition, the applicant shall demonstrate~~
~~net worth by providing the Department with the applicant's audited financial~~
~~statements. The net worth requirement also may be satisfied through~~
~~guarantees, letters of credit, or other security acceptable to the Department.~~

...."

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"§ 58-89A-50. Surety bond; letter of credit; other deposits.

(a) An applicant for licensure shall file with the Commissioner a surety bond ~~for the~~
~~benefit of the Commissioner as follows:~~

(1) ~~If the applicant was initially licensed prior to October 1, 2008, the bond, or~~
~~other items as provided for in subsection (f) of this section, shall be in the~~
~~amount of one hundred thousand dollars (\$100,000).~~

(2) ~~If the applicant was not initially licensed prior to October 1, 2008, the bond,~~
~~or other items as provided for in subsection (f) of this section, shall be in an~~
~~amount equal to five percent (5%) of the applicant's prior year's total North~~
~~Carolina wages, benefits, workers compensation premiums, and~~
~~unemployment compensation contributions, but not greater than five~~
~~hundred thousand dollars (\$500,000), or such greater amount as the~~
~~Commissioner may require.~~

bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred
thousand dollars (\$100,000) for the benefit of the Commissioner.

(b) The surety bond required by this section shall be in a form acceptable to the
Commissioner, issued by an insurer authorized by the Commissioner to write surety business in
this State, and maintained in force while the license remains in effect or any obligations or



* S 4 7 5 - C S R G - 5 - V - 2 *

liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond meets the requirements of this section, and (iii) 90 days' advance written notice is provided to the Commissioner.

(d) ~~A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.~~

...."

SECTION 3. G.S. 58-89A-95 reads as rewritten:

"§ 58-89A-95. ~~Agreement; notice.~~ Agreement.

(a) A licensee shall establish the terms of a PEO agreement by a written contract between the licensee and the client company.

(b) ~~The licensee shall give written notice of the agreement, by agreement or otherwise, as it affects assigned employees to each employee assigned to a client company work site. This written notice shall be given to each assigned employee not later than the first payday after the date on which that individual becomes an assigned employee.~~

(c) ~~The licensee shall give each employee written notice when the employee ceases to be an employee of the licensee."~~

SECTION 4. G.S. 58-89A-100 reads as rewritten:

"§ 58-89A-100. Contract requirements.

A contract between a licensee and a client company shall provide:

(1) ~~That the licensee reserves a right of direction and control over employees assigned to a client company's work sites. However, a~~ Unless otherwise expressly agreed by a professional employer organization and a client company in a PEO agreement, the client company may retain such sufficient retains the exclusive right of direction and control over the assigned employees as is necessary to conduct the client company's business and without which the client company would be unable to conduct its business, to discharge any fiduciary responsibility that it may have, or to comply with any applicable licensure, regulatory, or statutory requirement of the client company. ~~company or an assigned employee.~~ The PEO agreement shall provide that employment responsibilities not allocated to the licensee by the PEO agreement or this section remain with the client company.

(2) That the licensee assumes responsibility for the payment of wages to the assigned employees as agreed to in the PEO agreement.

(3) That the licensee assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on assigned employees.

(4) ~~That the licensee reserves a right to hire, fire, and discipline the assigned employees.~~ That the licensee shall have a right to hire, discipline, and terminate an assigned employee, as may be necessary to fulfill the licensee's responsibilities under this Chapter and a PEO agreement. The client company shall have a right to hire, discipline, and terminate an assigned employee.

(5) That the licensee retains a right of direction and control over the adoption of employment policies and the management of workers' compensation claims, claim filings, and related procedures in accordance with applicable federal laws and the laws of this State.

(6) That responsibility to obtain workers' compensation coverage for assigned employees, from an entity authorized to do business in this State and otherwise in compliance with all applicable requirements, shall be

1 specifically allocated in the PEO agreement to either the client company or
2 the licensee. If the responsibility is allocated to the licensee under any such
3 agreement, that agreement shall require that the licensee maintain and
4 provide to the client company, at the termination of the agreement if
5 requested by the client company, records regarding the loss experience
6 related to workers' compensation insurance provided to assigned employees
7 pursuant to the agreement."

8 **SECTION 5.** G.S. 58-89A-145 is repealed.

9 **SECTION 6.** G.S. 58-89A-155(a)(4) is repealed.

10 **SECTION 7.** This act becomes effective July 1, 2013.



SENATE BILL 475: PEO Act Amendments

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Meredith
Analysis of: PCS to First Edition
S475-CSR-G-5

Date: May 7, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *The proposed committee substitute for Senate Bill 475 makes the following changes to the Professional Employer Organization (PEO) Act: (1) rewrites the definition of "hazardous financial condition" applicable to PEO license applicants; (2) sets the bond requirement for licensure applicants at \$100,000; (3) deletes requirement to provide notice of the effects of a PEO agreement to employees assigned to a client company; (4) makes changes concerning the rights of a PEO and client company to control, hire, discipline, and terminate assigned employees; (5) repeals statute giving Commissioner authority to conduct examination of licensees; and (6) repeals provision giving Commissioner authority to discipline a licensee who, as an insurance fiduciary, willfully fails to give notice of group health or life insurance plan termination.*

BACKGROUND: A professional employer organization or PEO offers employment services by contract with a client company through which employees of the PEO are assigned to work at a client company. Under a PEO arrangement, employment responsibilities are shared by the PEO and the client company and the PEO assumes responsibility for the payment of wages to assigned employees, payment of payroll taxes, retains control over employment policies and the management of workers' compensation claims, and reserves a right to hire, fire and discipline assigned employees.

BILL ANALYSIS: Section 1 defines a "hazardous financial condition" to mean an "inability by an applicant...to demonstrate a net worth of at least \$50,000."

The current definition referenced in this section defines a hazardous financial condition as "insolvent or....unlikely to be able to meet obligations for known claims and reasonably anticipated claims or to pay other obligations in the normal course of business." Under current law, an applicant for licensure must be able to demonstrate that the applicant is not in a financially hazardous condition.

Section 2 deletes language requiring applicants for licensure initially licensed on or after October 1, 2008 to file a surety bond in an amount equal to 5% of the applicant's prior year's total NC wage, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than \$500,000.

With the deletion of this language, all applicants for licensure regardless of the date of initial licensing would be required to post a bond in the amount of \$100,000.

This section also deletes language prohibiting a PEO from requiring a client company to contribute to the payment of the surety bond.

Section 3 deletes language requiring a PEO to give written notice to each assigned employees as to the effects of the PEO agreement on assigned employees. This section also deletes language requiring a PEO to give written notice when the employee ceases to be an employee of the PEO.



Senate PCS 475

Page 2

Section 4 makes two changes regarding the rights of a PEO and client company to control, hire, discipline, or terminate assigned employees. Under current law, a PEO reserves a right of direction and control over employees assigned to a client company. The client company retains such sufficient control as is necessary to conduct the client's business.

Section 4 of the PCS provides that, unless otherwise expressly agreed by a PEO and a client in a PEO agreement, the client company retains the exclusive right of direction and control over assigned employees.

Section 4 also gives both a PEO and a client company a right to hire, discipline, and terminate an assigned employee. Current law reserves this right to the PEO.

Section 5 repeals the statute giving the Commissioner of Insurance the authority to conduct examinations of a PEO and to charge back the costs of the examination to the PEO.

Section 6 repeals a provision giving Commissioner the authority to discipline a licensee who, as an insurance fiduciary, willfully fails to fund pay premiums or fund a group health or life plan and fails to give 45 days notice of the plan termination.

EFFECTIVE DATE: The PCS for Senate Bill 475 becomes effective July 1, 2013.

TO: Members of the Senate Insurance Committee

FROM: Wayne Goodwin, NC Insurance Commissioner

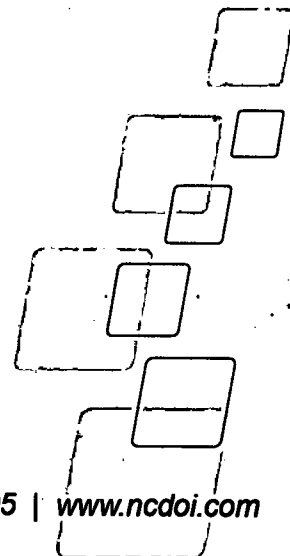
DATE: May 8, 2013

RE: SB 475 PEO Act Amendments

Dear Members of the Senate Insurance Committee,

I have serious concerns about the PEO bill that is before you today. These organizations are handling the money of other employees. The bill, especially in the two repeals at the end, is removing some very important safeguards and other provisions that were part of the model act.

I cannot support the bill.





Ambitions Realized®

May 7, 2013

The Honorable Tom Apodaca, Co-Chair
The Honorable Wesley Meredith, Co-Chair
Senate Committee on Insurance
North Carolina General Assembly
Raleigh, North Carolina 27601

Subject: **Support for Senate Bill 475**

Dear Senators Apodaca and Meredith:

On behalf of my company, TriNet, and the thousands of North Carolina small businesses and employees that we serve every day, I am writing to voice our support for Senate Bill 475. This important legislation provides for meaningful revisions to the regulatory framework for Professional Employer Organizations, like ourselves, operating in North Carolina by creating clear and transparent guidelines for both operators, and importantly, for those small businesses that we partner with for payroll, human resources and benefit purposes. These revisions, most importantly, strike a fair balance between effective regulatory oversight and a thriving business environment in the state of North Carolina.

Professional Employer Organizations (PEOs) like TriNet, specialize in managing benefits, payroll and human resources, allowing our small business clients to focus on their real business priorities to grow their bottom line and succeed. In today's marketplace, a company's most valuable asset is truly its employees. Small and medium-sized business owners and managers recognize that they must offer a solid benefits plan and employ sound Human Resources practices if they want to recruit and retain the best and the brightest in today's competitive labor market. Often times, however, they do not have the time, expertise or resources to adequately manage this process. Partnering with a PEO solves these issues.

TriNet along with the industry has worked collaboratively with the North Carolina Department of Insurance for more than a decade to ensure an appropriate level of regulatory oversight that provides appropriate protections for small businesses and employees as well as the state while also bolstering the statutory guidelines for PEOs. We believe this legislation will help improve transparency with the state in addition to providing one set of standards by which all PEOs must abide by in the state of North Carolina. With the enactment of SB 475, North Carolina's law will more closely mirror more than 40 states that have specific statutory provisions addressing the PEO-Small Business Relationship.

TriNet appreciates your leadership on this important small business issue in North Carolina. Please do not hesitate to contact me if I may be of any assistance.

Sincerely,

Todd J. Cohn
Director, Regulatory Affairs

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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1

SENATE BILL 477*

Short Title: No Set Fee/Noncovered Vision Services.

(Public)

Sponsors: Senators Meredith, Newton, Walters (Primary Sponsors); and Clark.

Referred to: Insurance.

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT INSURERS AND HEALTH BENEFIT PLANS FROM LIMITING
OR FIXING THE FEE AN OPHTHALMOLOGIST OR OPTOMETRIST MAY CHARGE
PATIENTS FOR SERVICES OR MATERIALS UNLESS THE SERVICES OR
MATERIALS ARE COVERED BY REIMBURSEMENT UNDER THE PLAN OR
INSURER CONTRACT WITH THE OPHTHALMOLOGIST OR OPTOMETRIST.

The General Assembly of North Carolina enacts:

SECTION 1. Part 7 of Article 50 of Chapter 58 of the General Statutes is amended
by adding a new section to read as follows:

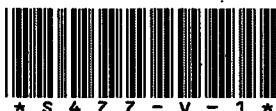
"§ 58-50-295. Health benefit plans or insurers contracting for provision of vision services

or materials; no limitation on fees for noncovered services or materials.

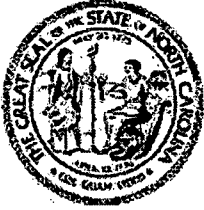
(a) No agreement between an insurer or an entity that writes vision insurance and an optometrist or ophthalmologist for the provision of vision services on a preferred or in-network basis to plan members or insurance subscribers in connection with coverage under a stand-alone vision plan, a medical plan, or health insurance policy may require that an optometrist or ophthalmologist provide services or materials at a fee limited or set by the plan or insurer unless the services or materials are reimbursed as covered services under the contract.

(b) For purposes of this section, "covered services" means a service for which reimbursement is available under an insurer's policy without regard to contractual limitations by a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or other limitation. For purposes of this section, "materials" includes lenses, devices containing lenses, prisms, lens treatments and coatings, contact lenses, orthoptics, vision training, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

SECTION 2. This act becomes effective October 1, 2013, and applies to contracts entered into, amended, or renewed on or after that date.



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SENATE BILL 477: No Set Fee/Noncovered Vision Services

2013-2014 General Assembly

Committee: Senate Insurance

Introduced by: Sens. Meredith, Newton, Walters

Analysis of: First Edition

Date: May 7, 2013

Prepared by: Amy Jo Johnson

Committee Counsel

SUMMARY: *Senate Bill 477 would prohibit agreements between an ophthalmologist or optometrist and an insurer or an entity that writes vision insurance that limit fees for vision services unless the services or materials are reimbursed as covered services under the contract.*

BILL ANALYSIS:

Senate Bill 477 would enact G.S. 58-50-295 to prohibit fee limitations in agreements between an ophthalmologist or optometrist and an insurer, or between an ophthalmologist or optometrist and an entity that writes vision insurance for the provision of vision services on a preferred or in-network basis, unless the service or materials in question are covered under the contract.

A "covered service" is defined as services for which reimbursement is available under an insurer's policy, without regard to contractual limitations by a deductible, co-payment, waiting period, or other limitation.

"Materials" include lenses, devices containing lenses, prisms, lens treatments and coatings, contact lenses, orthoptics, vision training, and prosthetic devices.

EFFECTIVE DATE:

This act is effective October 1, 2013, and applies to contracts entered into, amended, or renewed on or after that date.

O. Walker Reagan
Director



* S 4 7 7 - S M T K - 7 0 E 1 - V 1 *

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 477

DATE 5/8/13

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.) _____
Sen.) _____

1 moves to amend the bill on page 1, line 3, 6, + 10 + 13

2 () WHICH CHANGES THE TITLE

3 by _____

4 deleting the phrase "ophthalmologist" in each
5 place it appears.

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 477*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S477-ATK-26 [v.3]

Page 1 of 1

Comm. Sub. [NO]
Amends Title [YES]
First Edition

Date _____, 2013

Senator _____

1 moves to amend the bill on page 1, line 6, by rewriting the line to read:

2
3 "INSURER CONTRACT WITH THE OPHTHALMOLOGIST OR OPTOMETRIST AND TO
4 REQUIRE OPHTHALMOLOGISTS AND OPTOMETRISTS TO PROVIDE A WRITTEN
5 DISCLOSURE TO PATIENTS.";

6
7 And to further amend the bill on page 1, lines 25-26, by inserting the following between the
8 lines:

9
10 "(c) An optometrist or ophthalmologist duly licensed in this State shall disclose in writing to
11 any patient to whom a service is given that results in the writing of a prescription for glasses,
12 contact lenses, or other prescription vision products, the following in no smaller than ten point
13 type: 'YOU, AS A PATIENT, ARE UNDER NO OBLIGATION TO PURCHASE GLASSES,
14 CONTACT LENSES, OR OTHER PRESCRIPTION VISION PRODUCTS FROM THIS
15 PRESCRIBING PROVIDER, OR ANY AFFILIATE OF THE PROVIDER. YOU, AS A
16 PATIENT, HAVE THE FREEDOM TO OBTAIN AT THE TIME OF PAYMENT FOR
17 SERVICES RENDERED, A WRITTEN PRESCRIPTION FROM YOUR PROVIDER TO
18 USE IN THE PURCHASE OF GLASSES, CONTACT LENSES, OR OTHER
19 PRESCRIPTION VISION PRODUCT FROM ANY OTHER VENDOR.'"

20
21
SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* S 4 7 7 - A T K - 2 6 - V - 3 *



NATIONAL ASSOCIATION OF VISION CARE PLANS

S 477 Interferes with Business Contracts, Increases Costs for Consumers and Should Be Defeated.

The National Association of Vision Care Plans (NAVCP) opposes S 477 as the bill interferes with a contractual business relationship between two private entities, a vision care plan and an optometry practice/shop. It is unusual for the legislature to dictate terms of a business contract between two willing parties. This bill would also negatively affect North Carolina consumers by increasing the price of vision care materials and products.

Materials (lenses, frames, etc.), are typically not covered under the terms of a vision services policy. Instead, vision plans provide an allowance and/or a discount for the purchase of materials. S 477 would prohibit insurers from negotiating discounts for materials with providers if the materials are not covered.

Vision Plans and Vision Provider Networks negotiate specifically with providers to determine reimbursement rates for services and to provide discounts on materials. Discounts on materials are popular with consumers because providers frequently mark-up the retail price for materials from 200% to 400% of the wholesale price. In exchange for the discount, providers join the network, where consumers are directed specifically to them as network providers. Because providers have negotiated with plans to offer vision products and materials to consumers at a discount, integration of laboratories and vision supplies in vision plans lower costs to the consumer.

Prohibiting negotiated discounts on materials for providers within a network would create higher prices for consumers. When consumers cannot obtain discounts in a retail setting, they will increasingly seek discounts online and often from out-of-state vendors.

Separating discounts from vision plan benefits also breaks down the valuable relationship between eye examinations and the purchase of frames and lenses. Consumers are **four times more likely** to seek professional eye care when offered joint access to examinations and materials. Lower utilization means fewer patients will seek care and fewer will receive early diagnosis of chronic conditions.

Consumers purchase services and materials *together* and expect discounts. When they do, health outcomes and utilization *improves*. The negotiated discounts benefit consumers through lower costs and benefit providers through additional patients.

We strongly oppose disrupting this model by eliminating negotiated discounts or the direction of patients to in-network providers through integrated vision networks. Please defeat S 477.

NAVCP is the trade association for the managed vision care industry. The mission of NAVCP is efficient consumer access to quality vision care through promotion and advancement of the vision benefits industry. NAVCP strives to improve quality and efficiency in the delivery of vision care and promotes the value and importance of vision care and vision benefits to both consumers and employers. The 18 primary member companies manage extensive networks of vision care providers and include vision benefit coverage for over 119 million Americans. For more information, please contact Bill Scoggin, registered lobbyist for NAVCP.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 556

Short Title: Wind Up High Risk Health Insurance Pool. (Public)

Sponsors: Senator Hise (Primary Sponsor).

Referred to: Insurance.

April 1, 2013

A BILL TO BE ENTITLED
AN ACT TO WIND UP THE NORTH CAROLINA HEALTH INSURANCE RISK POOL.
The General Assembly of North Carolina enacts:

SECTION 1. Part 6 of Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read as follows:

"§ 58-50-260. Dissolution of Pool.

(a) Insurance operations of the Pool under this Part shall sunset on January 1, 2014.

(b) In order to be handled in the regular course of business, rather than under subsection (f) of this section, all invoices for medical, pharmacy, and any other services provided under this Part must be submitted no later than 90 days after the sunset of insurance operations of the Pool under subsection (a) of this section.

(c) In order to be handled in the regular course of business, rather than under subsection (f) of this section, all appeals and grievances under this Part must be submitted no later than 90 days after the sunset of insurance operations of the Pool under subsection (a) of this section.

(d) On or before September 1, 2013, the Pool shall submit to the Commissioner a plan for dissolution of the Pool. The plan shall address the following:

(1) Continuity of care for those participants in the Pool that are inpatient at the time of sunset of insurance operations of the Pool under subsection (a) of this section.

(2) Continuation of administrative services following the sunset of the Pool's insurance operations.

(3) Closing the Pool's bank and investment accounts.

(4) Cessation of premium subsidy programs.

(5) Performance and completion by June 30, 2014, of a final audit by the State Auditor and submission of the Pool's annual report to the State.

(6) A plan for maintenance of the Pool's books and records pursuant to G.S. 58-56-16 by the Pool's final third-party administrator.

(7) Efforts to secure contingency funding should the Pool's operations so require.

(8) Final dissolution of the Pool.

(9) The deposit and management of funding held in reserve following final dissolution of the Pool to be used in connection with actions by or against the Pool that are timely filed, as provided in subsection (e) of this section.

(10) Other matters that the Commissioner may reasonably require.

(e) The plan of dissolution for the Pool shall become effective upon approval in writing by the Commissioner. The Commissioner shall approve the plan of dissolution if he or she



* S 5 5 6 - V - 1 *

1 determines that the plan is suitable to assure the fair, reasonable, and equitable dissolution of
2 the Pool and that the plan complies with subsection (d) of this section.

3 (f) Notwithstanding any longer statute of limitations provided under law for an action,
4 all actions by or against the Pool must be filed on or before one year following the sunset of
5 insurance operations of the Pool under subsection (a) of this section. After final dissolution of
6 the Pool, the Pool's liability for insurance benefits, provider or vendor invoices, and all other
7 matters shall be limited to the reserve amount established under subdivision (9) of subsection
8 (d) of this section, less the costs of resolving the claims by or against the Pool.

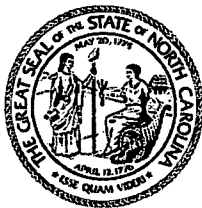
9 (g) Any funds in excess of the reserve amount established under subdivision (9) of
10 subsection (d) of this section that remain in the North Carolina Health Insurance Risk Pool
11 Fund at the time of final dissolution shall be paid into the General Fund. After the resolution of
12 timely filed actions against the Pool, any reserve funds remaining in the Risk Pool Fund shall
13 be paid into the General Fund."

14 **SECTION 2.** The sum of one million dollars (\$1,000,000) is transferred from the
15 Insurance Regulatory Fund to the North Carolina Health Insurance Risk Pool Fund to be used
16 for the purposes allowed under G.S. 58-50-225 and for the winding up of the North Carolina
17 Health Insurance Risk Pool.

18 **SECTION 3.** Effective January 1, 2015, G.S. 58-50-225(c) is repealed.

19 **SECTION 4.** Effective January 1, 2017, Part 6 of Article 50 of Chapter 58 of the
20 General Statutes is repealed.

21 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
22 law.



SENATE BILL 556: Wind Up High Risk Health Insurance Pool

2013-2014 General Assembly

Committee:	Senate Ref to Insurance. If fav, re-ref to Appropriations/Base Budget	Date:	May 7, 2013
Introduced by:	Sen. Hise	Prepared by:	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: *Senate Bill 556 would add a new section to Part 6 of Article 50 of Chapter 58, North Carolina Health Insurance Risk Pool, to sunset the Pool's insurance operations effective January 1, 2014. On or before September 1, 2013, the Pool is required to submit to the Commissioner a plan for dissolution. The bill would repeal Part 6 of Article 50 effective January 1, 2017.*

BACKGROUND: The North Carolina Health Insurance Risk Pool was established in 2007 to enable individuals with high-risk health conditions to obtain health insurance coverage. Effective January 1, 2014, the federal Affordable Care Act will offer coverage to individuals covered by the Pool.

BILL ANALYSIS: Section 1 of Senate Bill 556 would sunset the Pool's insurance operations effective January 1, 2014 and requires all invoices for medical, pharmacy, and other services and all appeals and grievances to be submitted no later than 90 days after this date to be handled in the regular course of business.

On or before September 1, 2013, the Pool is required to submit to the Commissioner for approval a plan for dissolution to address specific issues, including the following:

- Continuity of care for Pool participants
- The closing of bank and investment accounts
- The cessation of premium subsidies
- Performance and completion of a final audit
- A plan for maintenance of books and records
- Final dissolution,
- The deposit and management of funding held in reserve following final dissolution to be used in connection with timely-filed actions by or against the Pool
- Other matters required by the Commissioner

The plan of dissolution becomes effective upon approval in writing by the Commissioner.

All actions by or against the Pool must be filed on or before one year following the sunset of insurance operations. After dissolution, the Pool's liability for insurance benefits, invoices, and all other matters shall be limited to funding held in reserve.

Section 2 transfers \$1,000,000 from the Insurance Regulatory Fund to the Health Insurance Risk Pool Fund to be used to pay claims, benefits and administrative costs and to wind up the Risk Pool.

Section 3 repeals a provision requiring the Teacher's and State Employees Comprehensive Major Medical Plan to pay a surcharge to the Health Insurance Risk Pool Fund, effective January 1, 2015

Section 4 repeals statutory provisions governing the Pool, effective January 1, 2017.

EFFECTIVE DATE: Except as otherwise provided, Senate Bill 556 is effective when it becomes law.

O. Walker Reagan
Director



Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 690*

Short Title: Property Insurance Rate-Making Reform.

(Public)

Sponsors: Senators Sanderson, Cook (Primary Sponsors); Goolsby and Jenkins.

Referred to: Insurance.

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FAIRNESS AND EQUITY OF THE PROPERTY INSURANCE RATE-MAKING PROCESS BY PROVIDING FOR GREATER TRANSPARENCY REGARDING THE ROLE OF CATASTROPHE MODELING IN PROPERTY INSURANCE RATE FILINGS; AND BY PROVIDING THAT COSTS OF REINSURANCE INCLUDED IN A PROPERTY RATE FILING BE PROPERLY ALLOCABLE TO NORTH CAROLINA; AND BY ESTABLISHING A TWO-TIERED RATE THAT PROVIDES FOR A STATEWIDE RATE AND AN ADDITIONAL CATASTROPHE RATE BASED ON ACTUAL HISTORICAL LOSSES AS WELL AS CATASTROPHE MODELING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-10 reads as rewritten:

"§ 58-36-10. Method of rate making; factors considered.

The following standards shall apply to the making and use of rates:

- ...
- (3) In the case of property insurance rates under this Article, consideration ~~may~~shall be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. If the Rate Bureau presents any modeled hurricane losses based upon a commercial hurricane simulation computer model with a property insurance rate filing, the Bureau shall present data from more than one such model.

...."



SECTION 2. G.S. 58-36-15 reads as rewritten:

"§ 58-36-15. Filing loss costs, rates, plans with Commissioner; public inspection of filings.

...

(d2) The following supporting data, at a minimum, shall be included in any property insurance rate filing where a catastrophe model is used:

(1) Any simulated loss from a catastrophe model should include the following:

a. An event identifier.

b. The simulation year.

c. The State and county of first landfall, and the wind speed, based upon the Saffir-Simpson scale, at landfall.

d. The gross amount of North Carolina damages before application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.

e. The net amount of North Carolina insured loss after application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.

f. Any other information required by rules promulgated by the Commissioner.

(2) Annual historical exposure and hurricane loss data by territory for 1987 and each subsequent year.

(3) If requested by the Department, a statistical analysis comparing the historic loss data required by subdivision (2) of this subsection with any simulated losses used to support the rate filing.

(d3) With respect to property insurance rate filings, the Bureau, no later than January 1, 2015, shall transition to a two-tier system for filings for policies issued or renewed after that date. A policy holder's total rate for property insurance shall be the sum of the two rate tiers meeting all of the following requirements:

(1) The first rate tier shall be set on a statewide basis, based on consideration of all risks with the exception of catastrophe-related wind and hail peril. This tier shall be designated and set forth separately in all property insurance premium communications with insured parties as the "Statewide Noncatastrophe Premium." Territorial exceptions to the statewide rate will be permitted if there is credible data supporting a rate differential of at least fifteen percent (15%) from the statewide rate.

(2) The second rate tier will present the rate proportion needed on a regional basis to cover the costs of reinsurance and the risks for catastrophe-related wind and hail peril. This tier shall be designated and set forth separately in all property insurance premium communications with insured parties as the "Catastrophe Premium."

...."

SECTION 3. This act becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 690*
PROPOSED COMMITTEE SUBSTITUTE S690-CSRG-9 [v.1]

5/7/2013 8:24:08 PM

Short Title: Property Insurance Rate-Making Reform.

(Public)

Sponsors:

Referred to:

April 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE FAIRNESS AND EQUITY OF THE PROPERTY
3 INSURANCE RATE-MAKING PROCESS BY PROVIDING FOR GREATER
4 TRANSPARENCY REGARDING THE ROLE OF CATASTROPHE MODELING IN
5 PROPERTY INSURANCE RATE FILINGS; AND BY PROVIDING THAT COSTS OF
6 REINSURANCE INCLUDED IN A PROPERTY RATE FILING BE PROPERLY
7 ALLOCABLE TO NORTH CAROLINA; AND BY REQUIRING PROPERTY
8 INSURERS TO DESIGNATE IN PREMIUM COMMUNICATIONS WITH INSURED
9 THAT PORTION OF THE PREMIUM BASED ON FIRE AND NON-WIND AND HAIL
10 PERILS AND THAT PORTION BASED ON WIND AND HAIL.

11 The General Assembly of North Carolina enacts:

12 SECTION 1. G.S. 58-36-10 reads as rewritten:

13 "§ 58-36-10. Method of rate making; factors considered.

14 The following standards shall apply to the making and use of rates:

15 ...
16 (3) In the case of property insurance rates under this Article, consideration may
17 be given to the experience of property insurance business during the most
18 recent five-year period for which that experience is available. In the case of
19 property insurance rates under this Article, consideration shall be given to
20 the insurance public protection classifications of fire districts established by
21 the Commissioner. The Commissioner shall establish and modify from time
22 to time insurance public protection districts for all rural areas of the State
23 and for cities with populations of 100,000 or fewer, according to the most
24 recent annual population estimates certified by the State Budget Officer. In
25 establishing and modifying these districts, the Commissioner shall use
26 standards at least equivalent to those used by the Insurance Services Office,
27 Inc., or any successor organization. The standards developed by the
28 Commissioner are subject to Article 2A of Chapter 150B of the General
29 Statutes. The insurance public protection classifications established by the
30 Commissioner issued pursuant to the provisions of this Article shall be
31 subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated
32 in G.S. 58-2-75(a) do not apply. If the Rate Bureau presents any modeled
33 hurricane losses based upon a commercial hurricane simulation computer
34 model with a property insurance rate filing, the Bureau shall present data
35 from more than one such model.

36"



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1 **SECTION 2.** G.S. 58-36-15 reads as rewritten:

2 **"§ 58-36-15. Filing loss costs, rates, plans with Commissioner; public inspection of filings.**

3 ...

4 (d2) The following supporting data, at a minimum, shall be included in any property
5 insurance rate filing where a catastrophe model is used:

6 (1) Any simulated loss from a catastrophe model should include the following:

7 a. An event identifier.

8 b. The simulation year.

9 c. The State and county of first landfall, and the wind speed, based
10 upon the Saffir-Simpson scale, at landfall.

11 d. The gross amount of North Carolina damages before application of
12 any deductible or other applicable policy provisions that impact the
13 coverage, calculated with and without any applicable demand surge
14 adjustments.

15 e. The net amount of North Carolina insured loss after application of
16 any deductible or other applicable policy provisions that impact the
17 coverage, calculated with and without any applicable demand surge
18 adjustments.

19 f. Any other information required by rules promulgated by the
20 Commissioner.

21 (2) Annual historical exposure and hurricane loss data by territory for 1987 and
22 each subsequent year.

23 (3) If requested by the Department, a statistical analysis comparing the historic
24 loss data required by subdivision (2) of this subsection with any simulated
25 losses used to support the rate filing.

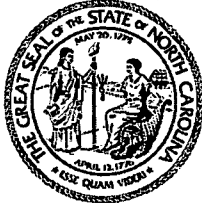
26 "

27 **SECTION 3.** Article 36 of Chapter 58 of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 58-36-42. Residential property premium communications.**

30 In all residential property premium communications with insured parties in the State, the
31 premium shall be set forth and designated separately as follows: (1) that portion of the premium
32 based on all risks with the exception of wind and hail peril shall be set forth and designated as
33 the "Fire and Non-Wind and Hail Premium"; and (2) that portion of the premium based on
34 consideration of risks and the costs of reinsurance for wind and hail peril shall be set forth and
35 designated as the "Wind and Hail Premium"."

36 **SECTION 4.** Section 3 of this act becomes effective January 1, 2014 and applies to
37 policies issued or renewed on or after that date. The remainder of this act becomes effective
38 July 1, 2013 and applies to filings made on or after that date.



SENATE BILL 690: Property Insurance Rate-Making Reform

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sens. Sanderson, Cook
Analysis of: PCS to First Edition
S690-CSR-9

Date: May 7, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *The proposed committee substitute for Senate Bill 690 makes the following changes to the law governing property insurance rate filings: (1) requires the Rate Bureau to submit data from more than one model if modeled losses are used; and (2) requires supporting data specific to North Carolina be included in a rate filing when a catastrophe model is used. Each filing must also include annual historical loss data by territory for 1987 and each subsequent year.*

The bill also requires property insurers to designate that portion of a premium based on fire and non-wind and hail perils and that portion based on wind and hail in all premium communications with policyholders.

BACKGROUND: Article 36 of Chapter 58 requires the N.C. Rate Bureau to file with the Commissioner for approval the proposed rates and rating plans for insurance against loss to residential real property. The State is divided into 18 separate territories for the purposes of property insurance rate-making. The burden of proving that a proposed rate meets the necessary standard of not being "excessive, inadequate, or unfairly discriminatory" is on the Rate Bureau. When deciding upon a rate, due consideration must be given to a number of factors including actual and prospective loss and expense experience within the State, the hazards of catastrophe, and a reasonable margin for underwriting profit.

BILL ANALYSIS:

Section 1 requires the Rate Bureau to submit data from more than one catastrophe model in a rate filing, if modeled losses are used.

Section 2 would add new language to G.S. 58-36-15 governing rate filings to require any simulated loss from a catastrophe model to include specific information such as annual probability, the amount of N.C. damages before and after the application of any deductible, specific information concerning first N.C. landfall or entry, wind speed, and other information. The Bureau would also be required as part of a model's supporting data to provide the actual annual historical exposure and hurricane loss data by territory for 1987 and each subsequent year and, if requested by the Department, a statistical analysis comparing the historic data with any simulated losses from the catastrophe model.

Section 3 adds a new section to require property insurers in all residential property premium communications with policyholders to set forth that portion of the premium based on all risks with the exception of wind and hail peril designated as the "Fire and Non-Wind and Hail Premium" and that portion based on risks and costs of reinsurance for wind and hail peril designated as the "Wind and Hail Premium."



Senate PCS 690

Page 2

EFFECTIVE DATE: Section 3 of the PCS for Senate Bill 690 becomes effective January 1, 2014 and applies to policies issued or renewed on or after that date. The remainder of the act becomes effective July 1, 2013 and applies to filings made on or after that date.

VISITOR REGISTRATION SHEET

Senate INSURANCE Committee

May 8, 2013

Name of Committee**Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME

FIRM OR AGENCY AND ADDRESS

Alan Brown

UNC-TV (press)

DOUG HERON

WILLIAMS MULLEN

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

May 8, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Angel Samms	CR
Theresa ~~Karr~~	CR
Doug Mishew	PSG
Steve Brewer	CTL
Sarah Hardin	CTL
Ken Melton	K.M.A.
Pat Sy	NCAJ
~~Debbie Ly L~~	~~NCAJ~~
Al. Onworts	NCSJA / NCSJA
Anna Schwitzgebel	NCSJA / NCSJA
Sara Fender	IFNC

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

May 8, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Abby Hammond	NCIC
Roger Battalff	NCFB
David Stiller	STATE Farm, Raleigh
Monty	NMRS
JEFFREY TRENDL	NCDOI
Sarah Rothecker	Brubaker & Assoc
John DeGiorno	Brubaker & Assoc
K. W. Jett	PERSONAL
Mark Fleming	BCBSNC
MATT VIOLE	CW Const
JAKE PARKER	NCFB

VISITOR REGISTRATION SHEET

Senate INSURANCE Committee

May 8, 2013

Name of Committee**Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME

FIRM OR AGENCY AND ADDRESS

Harry Lloyd

mw

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

May 8, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME

FIRM OR AGENCY AND ADDRESS

Judy Jenkins

OAPI

George Gersema

Employers Resource

Hudson Robinson

NCRMA

Robert Paschal

Young Moore

Michael Keough

NCHRP

Jean Holliday

NCDOI

Rose Williams

NCDOI

Julia Lerche

NCDOI

Edith Davis

NC Reinsurance Facility

Mickey Spivey

Young Moore and Henderson PA

Bill Trott

Young Moore Henderson PA

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

May 8, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Tim Lucas	NC Rate Bureau
JT Rode	BCS
Tim W	EWan
GREG ERATH	AIG
Dave [Signature]	SA
Townes Maxwell	PSG
Susan Valamuri	NW
Adrienne Drollette	NCSOS
Dr. Sally S. Miller	NCSOS optometrist Cumberland NC
Dr. Thomas Q. Benoit	NC State Optometric Society
[Signature]	BMAC [Signature]

**Senate Committee on Insurance
Wednesday, May 15, 2013, 10:00 AM
1027/1128 Legislative Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 475	PEO Act Amendments.	Senator Meredith
SB 556	Wind Up High Risk Health Insurance Pool.	Senator Hise
SB 468	Align Inspections W/Installer Licensing.	Senator Jenkins
SB 614	WC/Omnibus Changes.	Senator Brown

**Senate Committee on Insurance
Wednesday, May 15, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building**

MINUTES

The Senate Committee on Insurance met at 10:00 AM on May 15, 2013 in Room 1027/1128 of the Legislative Building. Ten members were present.

Senator Tom Apodaca, Chair, presided.

Joel Rundle from Raleigh, Mason Poole from Raleigh, Nicholas Couchell from Matthews, Jamario Williams from Henderson, Elijah Hamilton from Apex and Amon McEachern from Goldsboro served as pages.

S. B. 475 PEO Act Amendments

Senator Sanderson moved to adopt the proposed committee substitute (PCS) before the committee and it was carried. The PCS for Senate Bill 475 makes the following changes to the Professional Employer Organization (PEO) Act: (1) deletes the definition of "hazardous financial condition" applicable to PEO license applicants; instead, an applicant must demonstrate that its current assets exceed current liabilities; (2) sets the bond requirement for licensure applicants at \$100,000; additional bond is required for those applicants whose current assets do not exceed current liabilities; (3) deletes requirement that a licensee give assigned employees written notice when the employee ceases to be an employee; (4) makes changes concerning the rights of a PEO and client company to control, hire, discipline, and terminate assigned employees; (5) provides that Commissioner may only recover the reasonable costs of examination of a licensee following disciplinary violations or prohibited acts of a licensee; and (6) repeals provision in PEO Act giving Commissioner authority to discipline a licensee who, as an insurance fiduciary, willfully fails to give notice of group health or life insurance plan termination. If licensee is an insurance fiduciary, failure to provide notice remains a Class H felony under existing law. Senator Meredith was introduced to speak on the bill. Senator Hise moved for unfavorable to the bill – favorable to the PCS and it carried.

S. B. 556 Wind Up High Risk Health Insurance Pool

Senator Meredith moved to adopt the proposed committee substitute (PCS) before the committee and it was carried. Senate Bill 556 would add a new section to Part 6 of Article 50 of Chapter 58, North Carolina Health Insurance Risk Pool, to sunset the Pool's insurance operations effective January 1, 2014. On or before September 1, 2013, the Pool is required to submit to the Commissioner a plan for dissolution. The bill would repeal Part 6 of Article 50 effective January 1, 2017. Senator Hise was introduced to speak on the bill. Senator Hise brought forth two (2) amendments before the committee. Senator Davis moved to accept the amendments and it carried. Michael Keough/Executive Director for the North Carolina Health

Insurance Risk Pool spoke and answered questions. Tim Hovis an attorney from the Research Division also spoke. Senator Meredith moved unfavorable to the bill – favorable to the PCS as amended and it carried.

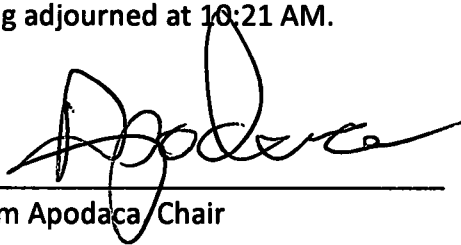
S. B. 468 Align Inspections W/Installer

Senator Walter moved to adopt the proposed committee substitute (PCS) before the committee and it was carried. The PCS to Senate Bill 468 would prohibit cities and counties from requiring more than one permit for the installation of a natural gas, propane, or electrical appliance by an installer holding a plumbing and heating license or an electrical license. Senator Walters was introduced to speak on the bill. Senator Meredith moved unfavorable to the bill – favorable to the PCS and it carried.

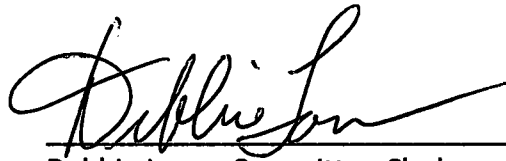
S. B. 614 WC/Omnibus Changes

Senator Meredith moved to adopt the proposed committee substitute (PCS) before the committee and it was carried. The PCS to Senate Bill 614 would allow an insurer to cancel a workers' compensation policy using any method of service provided in Rule 4 of the North Carolina Rules of Civil Procedure. Senator Brown was introduced to speak on the bill. Senator McKissick moved unfavorable to the bill – favorable to the PCS and it carried.

The meeting adjourned at 10:21 AM.

A handwritten signature in black ink, appearing to read "Apodaca", written over a horizontal line.

Senator Tom Apodaca Chair
Presiding

A handwritten signature in black ink, appearing to read "Debbie Lown", written over a horizontal line.

Debbie Lown, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

Wednesday, May 15, 2013

Senator Apodaca,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

SB 475

PEO Act Amendments.

Draft Number: S475-PCS85233-RG-14

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

SB 556

Wind Up High Risk Health Insurance Pool.

Draft Number: S556-PCS35344-RG-11

Sequential Referral: Appropriations/Base Budget

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 2

Senator Wesley Meredith will handle SB 475

Senator Ralph Hise will handle SB 556



* C M R 6 0 4 - V - 1 *

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

Wednesday, May 15, 2013

Senator Apodaca,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

SB 468	Align Inspections W/Installer Licensing.
	Draft Number: S468-PCS85232-TP-38
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: No
SB 614	WC/Omnibus Changes.
	Draft Number: S614-PCS75327-TP-36
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: Yes

TOTAL REPORTED: 2

Senator S. Jenkins will handle SB 468
Senator Harry Brown will handle SB 614



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 475

Short Title: PEO Act Amendments.

(Public)

Sponsors: Senator Meredith (Primary Sponsor).

Referred to: Insurance.

March 28, 2013

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS TECHNICAL, CLARIFYING, AND OTHER CHANGES
TO THE PROFESSIONAL EMPLOYER ORGANIZATION STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-5 reads as rewritten:

"§ 58-89A-5. Definitions.

In this Article:

...

(8) "Hazardous financial condition" ~~has the same meaning as in~~
~~G.S. 58-47-60(9) means inability by an applicant for an original or renewal~~
~~license to demonstrate a net worth of at least fifty thousand dollars~~
~~(\$50,000). For purposes of this definition, the applicant shall demonstrate~~
~~net worth by providing the Department with the applicant's audited financial~~
~~statements. The net worth requirement also may be satisfied through~~
~~guarantees, letters of credit, or other security acceptable to the Department.~~

...."

SECTION 2. G.S. 58-89A-50 reads as rewritten:

"§ 58-89A-50. Surety bond; letter of credit; other deposits.

(a) An applicant for licensure shall file with the Commissioner a surety bond for the
benefit of the Commissioner as follows:

(1) ~~If the applicant was initially licensed prior to October 1, 2008, the bond, or~~
~~other items as provided for in subsection (f) of this section, shall be in the~~
~~amount of one hundred thousand dollars (\$100,000).~~

(2) ~~If the applicant was not initially licensed prior to October 1, 2008, the bond,~~
~~or other items as provided for in subsection (f) of this section, shall be in an~~
~~amount equal to five percent (5%) of the applicant's prior year's total North~~
~~Carolina wages, benefits, workers compensation premiums, and~~
~~unemployment compensation contributions, but not greater than five~~
~~hundred thousand dollars (\$500,000), or such greater amount as the~~
~~Commissioner may require.~~

bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred
thousand dollars (\$100,000) for the benefit of the Commissioner.

(b) The surety bond required by this section shall be in a form acceptable to the
Commissioner, issued by an insurer authorized by the Commissioner to write surety business in
this State, and maintained in force while the license remains in effect or any obligations or



liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond meets the requirements of this section, and (iii) 90 days' advance written notice is provided to the Commissioner.

~~(d) A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.~~

...."

SECTION 3. G.S. 58-89A-60(b) reads as rewritten:

"(b) Every applicant shall file with the Commissioner evidence of financial responsibility. Evidence of financial responsibility includes an audited GAAP financial statement, prepared as of a date not more than 90 days before the date of application that demonstrates that the applicant or licensee ~~is not in a hazardous financial condition meets~~ financial qualifications as specified by the Commissioner and attached to which is a separate document signed by the chief executive and the chief financial officer certifying that (i) each has reviewed the financial statement; (ii) based on each signatory's knowledge, the financial statement does not contain any untrue or misleading statement of material fact or omit a fact with respect to the period covered by the financial statement; and (iii) based on each signatory's knowledge, the financial statement fairly presents in all material respects the financial condition of the licensee as of, and for, the period presented in the financial statement.

Notwithstanding the requirements of this subsection, the Commissioner may, in the Commissioner's discretion, accept an audited GAAP financial statement that has been prepared more than 90 days before submission to the Commissioner if the Commissioner deems such acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose conditions upon such acceptance of financial statements prepared more than 90 days prior to submission."

SECTION 4. G.S. 58-89A-95 reads as rewritten:

"§ 58-89A-95. ~~Agreement; notice.~~ Agreement.

(a) A licensee shall establish the terms of a PEO agreement by a written contract between the licensee and the client company.

~~(b) The licensee shall give written notice of the agreement, by agreement or otherwise, as it affects assigned employees to each employee assigned to a client company work site. This written notice shall be given to each assigned employee not later than the first payday after the date on which that individual becomes an assigned employee.~~

~~(c) The licensee shall give each employee written notice when the employee ceases to be an employee of the licensee."~~

SECTION 5. G.S. 58-89A-100 reads as rewritten:

"§ 58-89A-100. Contract requirements.

A contract between a licensee and a client company shall provide:

- (1) ~~That the licensee reserves a right of direction and control over employees assigned to a client company's work sites. However, a client company may retain such sufficient direction and control over the assigned employees as is necessary to conduct the client company's business and without which the client company would be unable to conduct its business, to discharge any fiduciary responsibility that it may have, or to comply with any applicable licensure, regulatory, or statutory requirement of the client company. The PEO agreement shall provide that employment responsibilities not allocated to the licensee by the PEO agreement or this section remain with the client company.~~

- 1 (2) That the licensee assumes responsibility for the payment of wages to the
2 assigned employees as agreed to in the PEO agreement.
3 (3) That the licensee assumes responsibility for the payment of payroll taxes and
4 collection of taxes from payroll on assigned employees.
5 (4) ~~That the licensee reserves a right to hire, fire, and discipline the assigned~~
6 ~~employees.~~
7 (5) That the licensee retains a right of direction and control over the adoption of
8 employment policies and the management of workers' compensation claims,
9 claim filings, and related procedures in accordance with applicable federal
10 laws and the laws of this State.
11 (6) That responsibility to obtain workers' compensation coverage for assigned
12 employees, from an entity authorized to do business in this State and
13 otherwise in compliance with all applicable requirements, shall be
14 specifically allocated in the PEO agreement to either the client company or
15 the licensee. If the responsibility is allocated to the licensee under any such
16 agreement, that agreement shall require that the licensee maintain and
17 provide to the client company, at the termination of the agreement if
18 requested by the client company, records regarding the loss experience
19 related to workers' compensation insurance provided to assigned employees
20 pursuant to the agreement."

21 **SECTION 6.** G.S. 58-89A-145 is repealed.

22 **SECTION 7.** G.S. 58-89A-155(a)(4) is repealed.

23 **SECTION 8.** This act becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 475
PROPOSED COMMITTEE SUBSTITUTE S475-CSRG-14 [v.2]

5/14/2013 8:31:16 PM

Short Title: PEO Act Amendments.

(Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS TECHNICAL, CLARIFYING, AND OTHER CHANGES
TO THE PROFESSIONAL EMPLOYER ORGANIZATION STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-5(8) is repealed.

SECTION 2. G.S. 58-89A-50 reads as rewritten:

"§ 58-89A-50. Surety bond; letter of credit; other deposits.

(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner as follows:

(1) If the applicant was initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in the amount of one hundred thousand dollars (\$100,000).

(2) If the applicant was not initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in an amount equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may require.

bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred thousand dollars (\$100,000) for the benefit of the Commissioner. An applicant whose current assets do not exceed current liabilities pursuant to G.S. 58-89A-60(b) shall file an additional surety bond or other items set forth in subsection (f) equal to or in excess of current liabilities less current assets.

(b) The surety bond required by this section shall be in a form acceptable to the Commissioner, issued by an insurer authorized by the Commissioner to write surety business in this State, and maintained in force while the license remains in effect or any obligations or liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond meets the requirements of this section, and (iii) 90 days' advance written notice is provided to the Commissioner.

(d) A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.

...."



* S 4 7 5 - C S R G - 1 4 - V - 2 *

1 **SECTION 3. G.S. 58-89A-60(b) reads as rewritten:**

2 "(b) Every applicant shall file with the Commissioner ~~evidence of financial~~
3 ~~responsibility. Evidence of financial responsibility includes~~ an audited GAAP financial
4 statement, prepared as of a date not more than 90 days before the date of application that
5 demonstrates that the applicant or licensee ~~is not in a hazardous financial condition~~ licensee's
6 current assets exceed current liabilities and attached to which is a separate document signed by
7 the chief executive and the chief financial officer certifying that (i) each has reviewed the
8 financial statement; (ii) based on each signatory's knowledge, the financial statement does not
9 contain any untrue or misleading statement of material fact or omit a fact with respect to the
10 period covered by the financial statement; and (iii) based on each signatory's knowledge, the
11 financial statement fairly presents in all material respects the financial condition of the licensee
12 as of, and for, the period presented in the financial statement.

13 Notwithstanding the requirements of this subsection, the Commissioner may, in the
14 Commissioner's discretion, accept an audited GAAP financial statement that has been prepared
15 more than 90 days before submission to the Commissioner if the Commissioner deems such
16 acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose
17 conditions upon such acceptance of financial statements prepared more than 90 days prior to
18 submission.

19 The audited GAAP financial statement shall be prepared in accordance with generally
20 accepted accounting principles, and audited by an independent certified public accountant
21 licensed to practice in the jurisdiction in which such accountant is located, and shall be without
22 qualification as to the going concern status of the PEO. A PEO Group may submit combined or
23 consolidated audited financial statements to meet the requirements of this section; except that a
24 PEO that has not had sufficient operating history to have audited financial statements based
25 upon at least twelve (12) months of operating history must meet the financial capacity
26 requirements of this subsection and present financial statements reviewed by a certified public
27 accountant."

28 **SECTION 4. G.S. 58-89A-85 reads as rewritten:**

29 **"§ 58-89A-85. Supervision; rehabilitation; liquidation.**

30 If at any time the Commissioner determines, after notice and an opportunity for the licensee
31 to be heard, that a licensee (i) has been or will be unable, in such a manner as may endanger the
32 ability of the licensee, to fully perform its obligations pursuant to this Article or (ii) ~~is bankrupt~~
33 ~~or in a hazardous financial condition, bankrupt,~~ the Commissioner may either (i) commence a
34 supervision proceeding pursuant to Article 30 of this Chapter or (ii) apply to the Superior Court
35 of Wake County or to the federal bankruptcy court that has previously taken jurisdiction over
36 the licensee, if applicable, for an order directing the Commissioner or authorizing the
37 Commissioner to rehabilitate or to liquidate a licensee in accordance with Article 30 of this
38 Chapter."

39 **SECTION 5. G.S. 58-89A-95 reads as rewritten:**

40 **"§ 58-89A-95. ~~Agreement; notice.~~ Agreement.**

41 (a) A licensee shall establish the terms of a PEO agreement by a written contract
42 between the licensee and the client company.

43 (b) The licensee shall give written notice of the agreement, by agreement or otherwise,
44 as it affects assigned employees to each employee assigned to a client company work site. ~~This~~
45 ~~written notice shall be given to each assigned employee not later than the first payday after the~~
46 ~~date on which that individual becomes an assigned employee.~~

47 (c) ~~The licensee shall give each employee written notice when the employee ceases to~~
48 ~~be an employee of the licensee."~~

49 **SECTION 6. G.S. 58-89A-100 reads as rewritten:**

50 **"§ 58-89A-100. Contract requirements.**

A contract between a licensee and a client company shall provide:

- (1) ~~That the licensee reserves a right of direction and control over employees assigned to a client company's work sites. However, a~~ Unless otherwise expressly agreed by a professional employer organization and a client company in a PEO agreement, the client company may retain such sufficient retains the exclusive right of direction and control over the assigned employees as is necessary to conduct the client company's business and without which the client company would be unable to conduct its business, to discharge any fiduciary responsibility that it may have, or to comply with any applicable licensure, regulatory, or statutory requirement of the client company. ~~company or an assigned employee.~~ The PEO agreement shall provide that employment responsibilities not allocated to the licensee by the PEO agreement or this section remain with the client company.
- (2) That the licensee assumes responsibility for the payment of wages to the assigned employees as agreed to in the PEO agreement.
- (3) That the licensee assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on assigned employees.
- (4) ~~That the licensee reserves a right to hire, fire, and discipline the assigned employees.~~ That the licensee shall have a right to hire, discipline, and terminate an assigned employee, as may be necessary to fulfill the licensee's responsibilities under this Chapter and a PEO agreement. The client company shall have a right to hire, discipline, and terminate an assigned employee.
- (5) That the licensee retains a right of direction and control over the adoption of employment policies and the management of workers' compensation claims, claim filings, and related procedures in accordance with applicable federal laws and the laws of this State.
- (6) That responsibility to obtain workers' compensation coverage for assigned employees, from an entity authorized to do business in this State and otherwise in compliance with all applicable requirements, shall be specifically allocated in the PEO agreement to either the client company or the licensee. If the responsibility is allocated to the licensee under any such agreement, that agreement shall require that the licensee maintain and provide to the client company, at the termination of the agreement if requested by the client company, records regarding the loss experience related to workers' compensation insurance provided to assigned employees pursuant to the agreement."

SECTION 7. G.S. 58-89A-145 reads as rewritten:

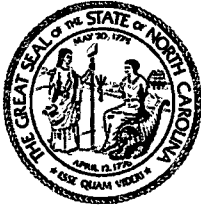
"§ 58-89A-145. Examinations.

- (a) The Commissioner may conduct an examination of a licensee as often as the Commissioner considers appropriate.
- (b) An examination under this Article shall be conducted in accordance with the Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134.
- (c) In lieu of an examination of any foreign or alien person licensed under this Article, the Commissioner may, in the Commissioner's discretion, accept an examination report on the licensee prepared by the appropriate regulator for the licensee's state of domicile.
- (d) When making an examination under this Article, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which ~~shall be borne by the~~

1 ~~licensee that is the subject of the examination may only be recovered pursuant to G.S. 58-89A-~~
2 ~~65(d)."~~

3 **SECTION 8.** G.S. 58-89A-155(a)(4) is repealed.

4 **SECTION 9.** This act becomes effective July 1, 2013.



SENATE BILL 475: PEO Act Amendments

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Meredith
Analysis of: PCS to First Edition
S475-CSR-14

Date: May 14, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *The proposed committee substitute for Senate Bill 475 makes the following changes to the Professional Employer Organization (PEO) Act: (1) deletes the definition of "hazardous financial condition" applicable to PEO license applicants; instead, an applicant must demonstrate that its current assets exceed current liabilities; (2) sets the bond requirement for licensure applicants at \$100,000; additional bond is required for those applicants whose current assets do not exceed current liabilities; (3) deletes requirement that a licensee give assigned employees written notice when the employee ceases to be an employee; (4) makes changes concerning the rights of a PEO and client company to control, hire, discipline, and terminate assigned employees; (5) provides that Commissioner may only recover the reasonable costs of examination of a licensee following disciplinary violations or prohibited acts of a licensee; and (6) repeals provision in PEO Act giving Commissioner authority to discipline a licensee who, as an insurance fiduciary, willfully fails to give notice of group health or life insurance plan termination. If licensee is an insurance fiduciary, failure to provide notice remains a Class H felony under existing law.*

BACKGROUND: A professional employer organization or PEO offers employment services by contract with a client company through which employees of the PEO are assigned to work at a client company. Under a PEO arrangement, employment responsibilities are shared by the PEO and the client company and the PEO assumes responsibility for the payment of wages to assigned employees, payment of payroll taxes, retains control over employment policies and the management of workers' compensation claims, and reserves a right to hire, fire and discipline assigned employees.

BILL ANALYSIS: Section 1 deletes the definition of hazardous financial condition. In its place, an applicant must demonstrate that current assets exceed current liabilities.

The current definition referenced in this section defines a hazardous financial condition as "insolvent or....unlikely to be able to meet obligations for known claims and reasonably anticipated claims or to pay other obligations in the normal course of business."

Section 2 deletes language requiring applicants for licensure initially licensed on or after October 1, 2008 to file a surety bond in an amount equal to 5% of the applicant's prior year's total NC wage, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than \$500,000.

With the deletion of this language, all applicants for licensure regardless of the date of initial licensing would be required to post a bond in the amount of \$100,000. An applicant whose current assets do not exceed current liabilities must file an additional bond equal to or in excess of current liabilities less current assets.

This section also deletes language prohibiting a PEO from requiring a client company to contribute to the payment of the surety bond.

O. Walker Reagan
Director



Research Division
(919) 733-2578

Senate PCS 475

Page 2

Under current law, an applicant or licensee must file an audited GAAP (Generally Accepted Accounting Principles) financial statement with the application. **Section 3** of the PCS authorizes a PEO to submit combined or consolidated financial statements to meet this requirement. This provision does not apply to a PEO that has not had sufficient operating history to have financial statements based upon at least 12 months of operating history.

Section 5 deletes language requiring a PEO to give written notice when an assigned employee ceases to be an employee of the PEO.

Section 6 makes two changes regarding the rights of a PEO and client company to control, hire, discipline, or terminate assigned employees. Under current law, a PEO reserves a right of direction and control over employees assigned to a client company. The client company retains such sufficient control as is necessary to conduct the client's business.

Section 6 of the PCS provides that, unless otherwise expressly agreed by a PEO and a client in a PEO agreement, the client company retains the exclusive right of direction and control over assigned employees.

Section 6 also gives both a PEO and a client company a right to hire, discipline, and terminate an assigned employee. Current law reserves this right to the PEO.

Section 7 provides that the Commissioner may only recover the reasonable costs of examination of a licensee following disciplinary violations or prohibited acts of a licensee.

Section 8 repeals a provision giving Commissioner the authority to discipline a licensee who, as an insurance fiduciary, willfully fails to fund pay premiums or fund a group health or life plan and fails to give 45 days' notice of the plan termination. If licensee is an insurance fiduciary, failure to provide notice remains a Class H felony under existing law and may subject a licensee to suspension or termination of its license.

EFFECTIVE DATE: The PCS for Senate Bill 475 becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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1

SENATE BILL 556

Short Title: Wind Up High Risk Health Insurance Pool.

(Public)

Sponsors: Senator Hise (Primary Sponsor).

Referred to: Insurance.

April 1, 2013

A BILL TO BE ENTITLED
AN ACT TO WIND UP THE NORTH CAROLINA HEALTH INSURANCE RISK POOL.
The General Assembly of North Carolina enacts:

SECTION 1. Part 6 of Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read as follows:

"§ 58-50-260. Dissolution of Pool.

(a) Insurance operations of the Pool under this Part shall sunset on January 1, 2014.
(b) In order to be handled in the regular course of business, rather than under subsection (f) of this section, all invoices for medical, pharmacy, and any other services provided under this Part must be submitted no later than 90 days after the sunset of insurance operations of the Pool under subsection (a) of this section.

(c) In order to be handled in the regular course of business, rather than under subsection (f) of this section, all appeals and grievances under this Part must be submitted no later than 90 days after the sunset of insurance operations of the Pool under subsection (a) of this section.

(d) On or before September 1, 2013, the Pool shall submit to the Commissioner a plan for dissolution of the Pool. The plan shall address the following:

- (1) Continuity of care for those participants in the Pool that are inpatient at the time of sunset of insurance operations of the Pool under subsection (a) of this section.
- (2) Continuation of administrative services following the sunset of the Pool's insurance operations.
- (3) Closing the Pool's bank and investment accounts.
- (4) Cessation of premium subsidy programs.
- (5) Performance and completion by June 30, 2014, of a final audit by the State Auditor and submission of the Pool's annual report to the State.
- (6) A plan for maintenance of the Pool's books and records pursuant to G.S. 58-56-16 by the Pool's final third-party administrator.
- (7) Efforts to secure contingency funding should the Pool's operations so require.
- (8) Final dissolution of the Pool.
- (9) The deposit and management of funding held in reserve following final dissolution of the Pool to be used in connection with actions by or against the Pool that are timely filed, as provided in subsection (e) of this section.
- (10) Other matters that the Commissioner may reasonably require.

(e) The plan of dissolution for the Pool shall become effective upon approval in writing by the Commissioner. The Commissioner shall approve the plan of dissolution if he or she



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1 determines that the plan is suitable to assure the fair, reasonable, and equitable dissolution of
2 the Pool and that the plan complies with subsection (d) of this section.

3 (f) Notwithstanding any longer statute of limitations provided under law for an action,
4 all actions by or against the Pool must be filed on or before one year following the sunset of
5 insurance operations of the Pool under subsection (a) of this section. After final dissolution of
6 the Pool, the Pool's liability for insurance benefits, provider or vendor invoices, and all other
7 matters shall be limited to the reserve amount established under subdivision (9) of subsection
8 (d) of this section, less the costs of resolving the claims by or against the Pool.

9 (g) Any funds in excess of the reserve amount established under subdivision (9) of
10 subsection (d) of this section that remain in the North Carolina Health Insurance Risk Pool
11 Fund at the time of final dissolution shall be paid into the General Fund. After the resolution of
12 timely filed actions against the Pool, any reserve funds remaining in the Risk Pool Fund shall
13 be paid into the General Fund."

14 **SECTION 2.** The sum of one million dollars (\$1,000,000) is transferred from the
15 Insurance Regulatory Fund to the North Carolina Health Insurance Risk Pool Fund to be used
16 for the purposes allowed under G.S. 58-50-225 and for the winding up of the North Carolina
17 Health Insurance Risk Pool.

18 **SECTION 3.** Effective January 1, 2015, G.S. 58-50-225(c) is repealed.

19 **SECTION 4.** Effective January 1, 2017, Part 6 of Article 50 of Chapter 58 of the
20 General Statutes is repealed.

21 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
22 law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 556
PROPOSED COMMITTEE SUBSTITUTE S556-CSR-11 [v.4]

5/14/2013 8:53:50 PM

Short Title: Wind Up High Risk Health Insurance Pool.

(Public)

Sponsors:

Referred to:

April 1, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO WIND UP THE NORTH CAROLINA HEALTH INSURANCE RISK POOL.
3 The General Assembly of North Carolina enacts:
4 SECTION 1. Part 6 of Article 50 of Chapter 58 of the General Statutes is amended
5 by adding a new section to read as follows:
6 "§ 58-50-260. Dissolution of Pool.
7 (a) Insurance operations of the Pool under this Part shall sunset on January 1, 2014.
8 (b) In order to be handled in the regular course of business, rather than under subsection
9 (f) of this section, all invoices for medical, pharmacy, and any other services provided under
10 this Part must be submitted no later than 90 days after the sunset of insurance operations of the
11 Pool under subsection (a) of this section.
12 (c) In order to be handled in the regular course of business, rather than under subsection
13 (f) of this section, all appeals and grievances under this Part must be submitted no later than 90
14 days after the sunset of insurance operations of the Pool under subsection (a) of this section.
15 (d) On or before September 1, 2013, the Pool shall submit to the Commissioner a plan
16 for dissolution of the Pool. The plan shall address the following:
17 (1) Continuity of care for those participants in the Pool that are inpatient at the
18 time of sunset of insurance operations of the Pool under subsection (a) of
19 this section.
20 (2) Continuation of administrative services following the sunset of the Pool's
21 insurance operations.
22 (3) Closing the Pool's bank and investment accounts.
23 (4) Cessation of premium subsidy programs.
24 (5) Performance and completion by June 30, 2014, of a final audit by the State
25 Auditor and submission of the Pool's annual report to the State.
26 (6) A plan for maintenance of the Pool's books and records pursuant to
27 G.S. 58-56-16 by the Pool's final third-party administrator.
28 (7) Efforts to secure contingency funding should the Pool's operations so
29 require.
30 (8) Final dissolution of the Pool.
31 (9) The deposit and management of funding held in reserve following final
32 dissolution of the Pool to be used in connection with actions by or against
33 the Pool that are timely filed, as provided in subsection (f) of this section.
34 (10) Other matters that the Commissioner may reasonably require.
35 (e) The plan of dissolution for the Pool shall become effective upon approval in writing
36 by the Commissioner. The Commissioner shall approve the plan of dissolution if he or she



* S 5 5 6 - C S R 6 - 1 1 - V - 4 *

determines that the plan is suitable to assure the fair, reasonable, and equitable dissolution of the Pool and that the plan complies with subsection (d) of this section.

(f) Notwithstanding any longer statute of limitations provided under law for an action, all actions by or against the Pool must be filed on or before one year following the sunset of insurance operations of the Pool under subsection (a) of this section. After final dissolution of the Pool, the Pool's liability for insurance benefits, provider or vendor invoices, and all other matters shall be limited to the reserve amount established under subdivision (9) of subsection (d) of this section, less the costs of resolving the claims by or against the Pool.

(g) Any funds in excess of the reserve amount established under subdivision (9) of subsection (d) of this section that remain in the North Carolina Health Insurance Risk Pool Fund at the time of final dissolution shall be paid into the General Fund. After the resolution of timely filed actions against the Pool, any reserve funds remaining in the Risk Pool Fund shall be paid into the General Fund."

SECTION 2. The sum of one million dollars (\$1,000,000) is appropriated from the General Fund to the North Carolina Health Insurance Risk Pool Fund to be used for the purposes allowed under G.S. 58-50-225 and for the winding up of the North Carolina Health Insurance Risk Pool.

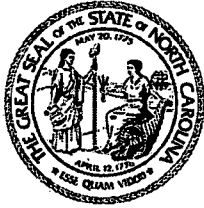
SECTION 3. G.S. 58-50-225(c) reads as rewritten:

"(c) For the purposes of providing the funds necessary to carry out the powers and duties of the Pool, effective July 1, 2008, the Teachers' and State Employees' Comprehensive Major Medical Plan and any successor Plan shall pay an annual surcharge to the North Carolina Health Insurance Risk Pool Fund in the amount of one dollar and fifty cents (\$1.50) per member per year based on enrollment of active employee Plan members and their dependents covered under the Plan. The final surcharge shall be paid to the Pool Fund for the 2013-2014 State fiscal year, and shall be paid in quarterly installments rather than in one annual payment. Such installments shall be paid to the Pool Fund 60 days after the close of each quarter, and shall be due on December 1, 2013, March 1, 2014, June 1, 2014 and September 1, 2014. The Pool shall transfer to the General Fund any funds that remain in the Pool Fund following the final dissolution of the Pool."

SECTION 4. Effective January 1, 2015, G.S. 58-50-225(c), as amended by Section 3 of this act, is repealed.

SECTION 5. Effective January 1, 2017, Part 6 of Article 50 of Chapter 58 of the General Statutes is repealed.

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.



SENATE BILL 556: Wind Up High Risk Health Insurance Pool

2013-2014 General Assembly

Committee:	Senate Ref to Insurance. If fav, re-ref to Appropriations/Base Budget	Date:	May 10, 2013
Introduced by:	Sen. Hise	Prepared by:	Tim Hovis
Analysis of:	PCS to First Edition S556-CSR-G-11		Committee Counsel

SUMMARY: *Senate Bill 556 would add a new section to Part 6 of Article 50 of Chapter 58, North Carolina Health Insurance Risk Pool, to sunset the Pool's insurance operations effective January 1, 2014. On or before September 1, 2013, the Pool is required to submit to the Commissioner a plan for dissolution. The bill would repeal Part 6 of Article 50 effective January 1, 2017.*

BACKGROUND: The North Carolina Health Insurance Risk Pool was established in 2007 to enable individuals with high-risk health conditions to obtain health insurance coverage. Effective January 1, 2014, the federal Affordable Care Act will offer coverage to individuals covered by the Pool.

BILL ANALYSIS: Section 1 of Senate Bill 556 would sunset the Pool's insurance operations effective January 1, 2014 and requires all invoices for medical, pharmacy, and other services and all appeals and grievances to be submitted no later than 90 days after this date to be handled in the regular course of business.

On or before September 1, 2013, the Pool is required to submit to the Commissioner for approval a plan for dissolution to address specific issues, including the following:

- Continuity of care for Pool participants
- The closing of bank and investment accounts
- The cessation of premium subsidies
- Performance and completion of a final audit
- A plan for maintenance of books and records
- Final dissolution,
- The deposit and management of funding held in reserve following final dissolution to be used in connection with timely-filed actions by or against the Pool
- Other matters required by the Commissioner

The plan of dissolution becomes effective upon approval in writing by the Commissioner.

All actions by or against the Pool must be filed on or before one year following the sunset of insurance operations. After dissolution, the Pool's liability for insurance benefits, invoices, and all other matters shall be limited to funding held in reserve.

Section 2 appropriates \$1,000,000 from the General Fund to the Health Insurance Risk Pool Fund to be used to pay claims, benefits and administrative costs and to wind up the Risk Pool.

Section 3 amends G.S. 58-50-225(c) governing the payment of an annual surcharge by the Teachers' and State Employees' Comprehensive Major Medical Plan to the Health Insurance Risk Pool Fund to provide that the final surcharge shall be paid for the 2013-2014 State fiscal year and shall be paid in



Senate PCS 556

Page 2

quarterly installments. Any Pool funds remaining following final dissolution will be transferred to the General Fund.

Section 4 repeals the provision requiring the Teachers' and State Employees' Comprehensive Major Medical Plan to pay a surcharge to the Health Insurance Risk Pool Fund, effective January 1, 2015.

Section 5 repeals statutory provisions governing the Pool, effective January 1, 2017.

EFFECTIVE DATE: Except as otherwise provided, Senate Bill 556 is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 556

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 1

S556-ARG-8 [v.1]

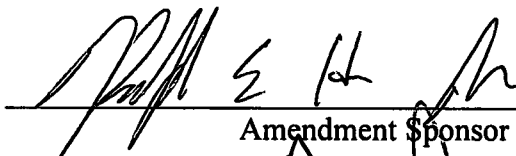
Comm. Sub. [NO]
Amends Title [NO]
H556-CSR-11

Date _____, 2013

Senator _____

- 1 moves to amend the bill on page 2, line 28,
2 by rewriting the line to read:
3 "Pool shall transfer to the General Fund any funds in excess of the reserve amount established
4 under G.S. 58-50-260(9) that remain in the Pool Fund following the".
5
6

SIGNED


Amendment Sponsor

SIGNED


Committee Chair if Senate Committee Amendment

ADOPTED

☒

FAILED

☐

TABLED

☐



* S 5 5 6 - A R G - 8 - V - 1 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 556

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 1

S556-ARG-6 [v.2]

Comm. Sub. [NO]
Amends Title [NO]
S556-CSR-11(v.3)

Date _____, 2013

Senator _____

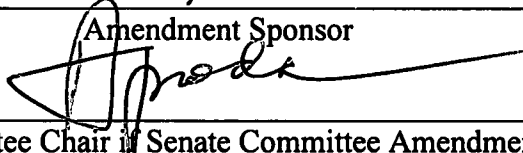
- 1 moves to amend the bill on page 2, line 33,
2 by rewriting the line to read:
3 "General Statutes is repealed."
4 SECTION 6. G.S. 58-3-276 is repealed.";
5
6 and by renumbering the remaining sections accordingly.
7
8

SIGNED



Amendment Sponsor

SIGNED



Committee Chair of Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* S 5 5 6 - A R G - 6 - V - 2 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 468

Short Title: Align Inspections W/Installer Licensing.

(Public)

Sponsors: Senators Jenkins (Primary Sponsor); Jackson, McLaurin, and Walters.

Referred to: Commerce.

March 28, 2013

A BILL TO BE ENTITLED
AN ACT TO SPECIFY THAT WHEN APPLIANCE INSTALLERS ARE LICENSED TO
PERFORM ALL ASPECTS OF AN INSTALLATION, JUST ONE PERMIT AND
INSPECTION WILL BE REQUIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-360 reads as rewritten:

"§ 153A-360. Inspections of work in progress.

As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes. A county may not require any permit other than a plumbing permit for the installation of any natural gas or propane appliance by an installer holding a plumbing license, so long as the installation does not otherwise require the installer to hold another license."

SECTION 2. G.S. 160A-420 reads as rewritten:

"§ 160A-420. Inspections of work in progress.

As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes. A city may not require any permit other than a plumbing permit for the installation of any natural gas or propane appliance by an installer holding a plumbing license, so long as the installation does not otherwise require the installer to hold another license."

SECTION 3. This act becomes effective July 1, 2013.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 468
PROPOSED COMMITTEE SUBSTITUTE S468-CSTP-38 [v.1]

5/14/2013 2:48:51 PM

Short Title: Align Inspections W/Installer Licensing.

(Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED
AN ACT TO SPECIFY THAT WHEN APPLIANCE INSTALLERS ARE LICENSED TO
PERFORM ALL ASPECTS OF AN INSTALLATION, JUST ONE PERMIT AND
INSPECTION WILL BE REQUIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-360 reads as rewritten:

"§ 153A-360. Inspections of work in progress.

As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes. When a person licensed under G.S. 87-21 or G.S. 87-43 performs the installation or replacement of any natural gas, propane gas, or electrical appliance on an existing structure, a county shall not require more than one permit for the complete installation or replacement. The cost of the permit for such work shall not exceed the cost of any one individual trade permit issued by that county."

SECTION 2. G.S. 160A-420 reads as rewritten:

"§ 160A-420. Inspections of work in progress.

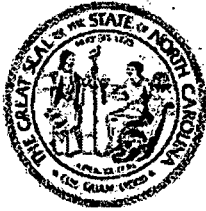
As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes. When a person licensed under G.S. 87-21 or G.S. 87-43 performs the installation or replacement of any natural gas, propane gas, or electrical appliance on an existing structure, a city shall not require more than one permit for the complete installation or replacement. The



* S 4 6 8 - C S T P - 3 8 - V - 1 *

1 cost of the permit for such work shall not exceed the cost of any one individual trade permit
2 issued by that city."

3 **SECTION 3.** This act becomes effective July 1, 2013.



SENATE BILL 468: Align Inspections W/Installer Licensing

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Jenkins
Analysis of: PCS to First Edition
S468-CSTP-38

Date: May 14, 2013
Prepared by: Peter Ledford
Committee Counsel

SUMMARY: *The PCS to Senate Bill 468 would prohibit cities and counties from requiring more than one permit for the installation of a natural gas, propane, or electrical appliance by an installer holding a plumbing and heating license or an electrical license.*

CURRENT LAW: Under G.S. 153A-357(a)(2) and G.S. 160A-417(a)(2), no person may commence any installation, reconstruction, or general repair of a plumbing or electrical system, including the installation or replacement of certain appliances, without a permit from the inspection department of the local jurisdiction. Pursuant to G.S. 153A-360 and G.S. 160A-420, the inspection department may inspect work that is in progress pursuant to a permit to satisfy them that it is being performed in accordance with the terms of the permit and applicable laws.

BILL ANALYSIS: Senate Bill 468 would prohibit cities and counties from requiring more than one permit for the installation or replacement of a natural gas, propane gas, or electrical appliance when the work is done by a licensed plumbing and heating contractor or a licensed electrical contractor. The bill would also prohibit cities and counties from charging more for a permit for such work than they do for any other individual trade permit.

EFFECTIVE DATE: This act becomes effective July 1, 2013.

O. Walker Reagan
Director



Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 614

Short Title: WC/Omnibus Changes.

(Public)

Sponsors: Senators Brown (Primary Sponsor); and Jackson.

Referred to: Insurance.

April 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE INSURANCE LAWS RELATING TO THE NOTICE
3 REQUIRED FOR CANCELLATION OF WORKERS' COMPENSATION INSURANCE
4 POLICIES AND TO AMEND THE WORKERS' COMPENSATION ACT
5 CONCERNING THE STATUS OF TRUCK DRIVERS AS EMPLOYEES OR
6 INDEPENDENT CONTRACTORS AND RELATING TO OUT-OF-STATE
7 ACCIDENTS AND STATE RECIPROCITY OF CLAIMS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1.(a) G.S. 58-36-105(b) reads as rewritten:

10 "(b) Any cancellation permitted by subsection (a) of this section is not effective unless
11 written notice of cancellation has been given by registered or certified mail, return receipt
12 requested, to the insured not less than 15 days before the proposed effective date of
13 cancellation. The notice shall be given by registered or certified mail, return receipt requested,
14 to the insured and any other person designated in the policy to receive notice of cancellation at
15 their addresses shown in the policy or, if not indicated in the policy, at their last known
16 addresses. The notice shall state the precise reason for cancellation. Whenever notice of
17 intention to cancel is required to be given by registered or certified mail, no cancellation by the
18 insurer shall be effective unless and until such method is ~~employed and completed.~~ employed.
19 Failure to send this notice, as provided in this section, to any other person designated in the
20 policy to receive notice of cancellation invalidates the cancellation only as to that other person's
21 interest."

22 SECTION 1.(b) This section is effective when it becomes law and applies to
23 insurance policies in effect on or after that date.

24 SECTION 2.(a) G.S. 97-19.1 reads as rewritten:

25 "§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or
26 independent contractor.

27 (a) An individual in the interstate or intrastate carrier industry who operates a truck,
28 tractor, or truck tractor trailer ~~licensed by a governmental motor vehicle regulatory agency for a~~
29 motor carrier as defined by G.S. 20-4.01(21b) may be an employee or an independent
30 contractor under this Article dependent upon the application of the common law test for
31 determining employment status.

32 Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether
33 such contractor regularly employs three or more employees, who contracts with an individual
34 in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer
35 ~~licensed by the United States Department of Transportation for a motor carrier as defined in~~
36 G.S. 20-4.01(21b) and who has not secured the payment of compensation in the manner



provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate contractor, or subcontractor shall not be liable as an employer under this Article for the payment of compensation on account of the injury or death of the independent contractor if the principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent contractor who is an individual licensed by the United States Department of Transportation and owns or leases the vehicle providing service, (ii) the independent contractor personally operates or is responsible for hiring or engaging and paying personnel who operate the vehicle, and is operating the vehicle solely pursuant to that license, (iii) the independent contractor is covered under an occupational accident policy either issued to the independent contractor or motor carrier.

(c) A motor carrier and an independent contractor meeting the criteria contained in subsection (b) of this section may, if mutually agreed to by the independent contractor and motor carrier in writing, provide that the independent contractor and any of the independent contractor's employees be covered by the motor carriers' workers' compensation insurance policy or self-insurance and that the independent contractor and any of the independent contractor's employees would be deemed employees of the motor carrier for purposes of workers' compensation only. The motor carrier may charge the independent contractor for any agreed upon premiums or, if self-insured, for any equitable assessment for such coverage. The agreement shall not affect the independent contractor status of the independent contractor for any purpose other than for workers' compensation.

(d) For purposes of this section, the term "occupational accident insurance" means the type of insurance policy obtained by independent contractor owners-operators in the trucking industry that includes the following benefit categories: (i) temporary total disability-type wage replacement benefit, (ii) permanent disability or impairment benefit, (iii) a medical expense payment benefit, and (iv) a death benefit. The occupational accident insurance policy may be issued directly to the independent contractor owner-operator or issued as a master policy for which the motor carrier may charge the independent contractor owner-operator an equitable sum for the coverage. The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 2.(b) This section is effective when it becomes law.

SECTION 3.(a) G.S. 97-36 reads as rewritten:

"§ 97-36. Accidents taking place outside State; employees receiving compensation from another state; reciprocity.

(a) Where an accident happens while the employee is employed elsewhere than in this State and the accident is one which would entitle him or his the employee or the employee's dependents or next of kin to compensation if it had happened in this State, then the employee or his the employee's dependents or next of kin shall be entitled to compensation (i) if the contract of employment was made in this State, (ii) if the employer's principal place of business is in

1 this State, or (iii) if the employee's principal place of employment is within this State; provided,
2 however, that if an employee or his dependents or next of kin shall receive compensation or
3 damages under the laws of any other state nothing herein contained shall be construed so as to
4 permit a total compensation for the same injury greater than is provided for in this Article.

5 (b) If an employee in this State temporarily leaves the State incidental to the employee's
6 employment and receives an accidental injury arising out of and in the course of the
7 employment, then the employee, or beneficiaries of the employee if the injury results in death,
8 must file their claim for compensation in this State subject to the terms of any choice of forum
9 clause contained in the employee's employment contract. If there is no choice of forum clause
10 in the employment contract, then the other provisions in this section shall apply.

11 (c) An employee from another state and the employer of the employee in the other state
12 are exempt from the provisions of this Chapter while the employee is working temporarily in
13 this State only if all of the following conditions are met:

14 (1) The employer has furnished workers' compensation insurance coverage
15 under the workers' compensation insurance or similar laws of the other state
16 to cover the employee's employment while in this State.

17 (2) The extraterritorial provisions of this Chapter are recognized in the other
18 state.

19 (3) Employees and employers who are covered in this State are likewise
20 exempted from the application of the workers' compensation insurance or
21 similar laws of the other state.

22 (d) The benefits under the workers' compensation insurance or similar laws of the other
23 state, or other remedies under similar law, are the exclusive remedies against the employer for
24 any injury, whether resulting in death or not, received by the employee while working
25 temporarily for that employer in this State.

26 (e) A certificate from the governmental entity or duly authorized officer or person of
27 another state certifying that the employer from the other state is insured in that state and has
28 provided extraterritorial coverage insuring employees while working in this State is prima facie
29 evidence that the employer carries that workers' compensation insurance.

30 (f) Whenever in any appeal or other litigation the construction of the laws of another
31 jurisdiction is required, the court shall take judicial notice of such construction of the laws of
32 the other jurisdiction.

33 (g) The Industrial Commission may enter into an agreement with the workers'
34 compensation agency of any other state relating to conflicts of jurisdiction where the contract
35 of employment is in one state and the injuries occur in the other state or where there is a dispute
36 as to the boundaries or jurisdiction of the states. When such an agreement has been duly
37 executed and made public by the respective state agencies, then (i) the rights of employees who
38 are hired in the other state and injured while working temporarily in this State or hired in this
39 State and injured while working temporarily in the other states and (ii) when claims arise where
40 jurisdiction is otherwise uncertain, the rights of employees shall be determined pursuant to the
41 agreement and confined to the jurisdiction provided in the agreement.

42 (h) When an employee has a claim under the workers' compensation law of another
43 jurisdiction for the same injury or occupational disease as the claim filed in this State, the total
44 amount of compensation paid or awarded under the other workers' compensation law shall be
45 credited against the compensation due under the North Carolina Workers' Compensation Act.

46 (i) The following definitions apply in this section:

47 (1) Jurisdiction or state. – Includes a territory, province, or foreign nation.

48 (2) Working temporarily. – When an employee is working for his or her
49 employer for no more than 10 consecutive days or for no more than 25 total
50 days during a calendar year in a state other than the state where the
51 employee is primarily employed."

1 **SECTION 3.(b)** This section is effective when it becomes law and applies to
2 claims for workers' compensation insurance benefits made on or after that date regardless of the
3 date of the accident.

4 **SECTION 4.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 614
PROPOSED COMMITTEE SUBSTITUTE S614-CSTP-36 [v.3]

5/14/2013 5:53:11 PM

Short Title: WC/Cancellation Procedure Changes.

(Public)

Sponsors:

Referred to:

April 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE INSURANCE LAWS RELATING TO THE NOTICE
3 REQUIRED FOR CANCELLATION OF WORKERS' COMPENSATION INSURANCE
4 POLICIES.

5 The General Assembly of North Carolina enacts:

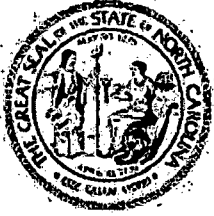
6 SECTION 1. G.S. 58-36-105(b) reads as rewritten:

7 "(b) Any cancellation permitted by subsection (a) of this section is not effective unless
8 written notice of cancellation has been given ~~by registered or certified mail, return receipt~~
9 ~~requested~~, to the insured not less than 15 days before the proposed effective date of
10 cancellation. The notice ~~may~~ shall be given by registered or certified mail, return receipt
11 requested, to the insured and any other person designated in the policy to receive notice of
12 cancellation at their addresses shown in the policy or, if not indicated in the policy, at their last
13 known addresses. The notice shall state the precise reason for cancellation. Whenever notice of
14 intention to cancel is ~~required to be~~ given by registered or certified mail, no cancellation by the
15 insurer shall be effective unless and until such method is employed and completed. Notice of
16 cancellation may also be given by any method permitted for service of process pursuant to Rule
17 4 of the North Carolina Rules of Civil Procedure. Failure to send this notice, as provided in this
18 section, to any other person designated in the policy to receive notice of cancellation
19 invalidates the cancellation only as to that other person's interest."

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



* S 6 1 4 - C S T P - 3 6 - V - 3 *



SENATE BILL 614: WC/Cancellation Procedure Changes

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Brown
Analysis of: PCS to First Edition
S614-CSTP-36

Date: May 14, 2013
Prepared by: Peter Ledford
Committee Counsel

SUMMARY: *The PCS to Senate Bill 614 would allow an insurer to cancel a workers' compensation policy using any method of service provided in Rule 4 of the North Carolina Rules of Civil Procedure.*

CURRENT LAW: G.S. 58-36-105(a) provides a list of reasons for which a workers compensation policy may be cancelled by the insurer before the expiration of its term and without the prior written consent of the insured. G.S. 58-36-105(b) requires that an insurer give written notice of cancellation stating the precise reason for cancellation to the insured and any other person designated in the policy to receive notice of cancellation by registered or certified mail, return receipt requested, not less than 15 days before the effective date of cancellation. The cancellation is not effective unless the prescribed method is employed and completed.

BILL ANALYSIS: Senate Bill 614 would amend G.S. 58-36-105(b) to also allow an insurer to cancel a workers' compensation policy using any method of service provided in Rule 4 of the North Carolina Rules of Civil Procedure. Those methods include:

- Delivering a copy to the insured, or leaving a copy with a person of suitable age at the insured's home.
- Delivering a copy to an agent authorized by the insured.
- Mailing and delivering a copy using registered or certified mail, return receipt requested, to the insured.
- Depositing a copy with a designated delivery service and obtaining a delivery receipt.
- Mailing and delivering a copy using signature confirmation.

EFFECTIVE DATE: This act is effective when it becomes law.



VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

May 15, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Hardin	CTR
Tommy Sevi	Meene and Van Allen
Pamela Kozly	MVA
Nathan Babcock	NC Chamber
Mon, B. B. B.	AAAP-NC
Rose Williams	NC DOI
Sarah Wolfe	MWC LLC
Sara Fender	IFNC
Suzem Valen	NW
John McMillan	MFS
Thomas Hardaway	Pharma

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

May 15, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Parmer Sugg	NCAJ
DAVID WARD	LOWE'S
Crystal Collins	NC Trucking Assn.
Joe Coletti	OSBM
Jean Holliday	NCDOJ
Susan Latta	DANSEN PRUITT
Kathleen Kesthacker	Kubacki & Assoc.
John DeGromer	Brubaker & Assoc.
Edith Davis	NC Reinsurance Facility
Michael Keough	NC Health Law Risk Pool
Elizabeth Page	NC Health Ins. Risk Pool

VISITOR REGISTRATION SHEET

Senate INSURANCE Committee

Name of Committee

May 15, 2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME _____

FIRM OR AGENCY AND ADDRESS

Harry Lloyd

mwc

Ribit Pashchal

Young Moore

VISITOR REGISTRATION SHEET

Senate INSURANCE Committee

May 15, 2013

Name of Committee**Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

[illegible]

Senate Committee on Insurance
Wednesday, June 5, 2013, 10:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 240	Insurance Technical/Clarifying Changes.-AB	Representative Dockham
HB 340	Limited Lines Travel Insurance.	Representative Dockham
HB 473	NC Captive Insurance Act.	Representative Dockham Representative Howard Representative Johnson Representative Tine
HB 649	Small Group Health Ins. Technical Changes.	Representative Collins Representative Dockham
HB 650	Guaranty Association Act Amendments.	Representative Collins
SB 248	Choice of Hearing Aid Specialist.	Senator Hartsell

**Senate Committee on Insurance
Wednesday, June 5, 2013 at 10:00 AM
Room 1027/1128 of the Legislative Building**

MINUTES

The Senate Committee on Insurance met at 10:00 AM on June 5, 2013 in Room 1027/1128 of the Legislative Building. Eight members were present.

Senator Tom Apodaca, Chair, presided.

Cody Tatum from Yanceyville, Caitlyn Ebert from Hickory, Alex Hale from Eden and Allison Clark served as pages.

H. B. 240 Insurance Technical/Clarifying Changes, -AB

Senator Davis moved to adopt the proposed committee substitute (PCS) before the committee and it carried. House Bill 240 makes various statutory changes recommended by the Department of Insurance. Representative Dockham was introduced to speak on the bill. Rose Vaughn Williams Legislative Counsel for the North Carolina Department of Insurance also spoke on the bill. Senator Walter moved unfavorable to the bill – favorable to the PCS and it carried. Senator Apodaca will handle this bill on the floor.

H. B. 340 Limited Liens Travel Insurance

Representative Dockham was introduced to speak on the bill. House Bill 340 would authorize the Department of Insurance to regulate travel insurance producers. The bill would allow a licensed travel insurance producer to offer travel insurance through travel retailers, such as travel agents. The newly – regulated producers would pay a registration fee to the Department of Insurance. Rebecca Shigley Deputy Commissioner for the North Carolina Department of Insurance was introduced to speak on the bill and assist with responses to the members. Senator Sanderson brought an amendment before the committee. Tim Hovis explained the amendment and the members accepted it before the committee. Senator Ford moved unfavorable to the bill – favorable to the bill as amended and the amendment was to be engrossed into a proposed committee substitute. The motion was carried and the Senator Apodaca referred the bill to the Senate Finance Committee. Senator Apodaca will handle this bill on the floor.

H. B. 473 NC Captive Insurance Act

Senator Ford moved to adopt the proposed committee substitute (PCS) before the committee and it carried. House Bill 473 would allow captive insurance companies in the State and establish procedures for the organization and regulation of their operations. The PCS makes minor technical changes. Representative Dockham was introduced to speak on the bill. Rose

Vaughn Williams Legal Counsel for the North Carolina Department of Insurance spoke in favor of the bill. Senator Gunn moved unfavorable to the bill – favorable to the PCS and it carried. Senator Meredith will handle this bill on the floor.

H. B. 649 Small Group Health Insurance Technical Changes

Senator Dockham was introduced to speak on the bill. House Bill 649 makes changes to the Small Employer Group Health Coverage Reform Act as a response to various changes to the insurance market that will take effect due to federal regulations. Amy Jo Johnson and attorney from the Research Division explained the bill. Jean Holiday, Project Manager in the Life and Health Division of the North Carolina Department of Insurance was asked to speak. Senator Walters brought before the members two amendments. Ms. Johnson explained both amendments and they were accepted before the committee. Senator Davis moved unfavorable to the bill – favorable to the bill as amended and it carried. Both amendments were engrossed into a proposed committee substitute. Senator Hise will handle this bill on the floor.

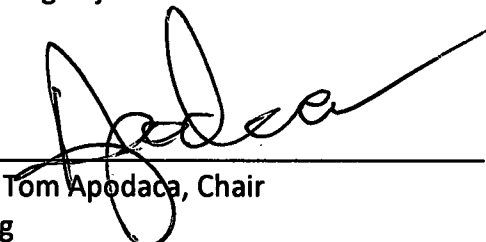
H. B. 650 Guaranty Association Act Amendments

Representative Dockham was introduced to speak on the bill. He asked Tim Hovis to assist with the explanation. House Bill 650 makes changes to the statutes governing the Life and Health Insurance Guaranty Association including the following: (1) clarifies law governing Association coverage for policies with interest rates determined by an index or other external reference; (2) excludes coverage for Medicare Parts C and D policies; (3) establishes aggregate coverage limits for health insurance benefits; (4) deletes obsolete language related to foreign, domestic, and alien insurers; (5) authorizes the use of substitute fixed rate policies when providing coverage for a policy with indexed interest rates; and (6) increases the maximum class A assessment per member company. Senator McKissick moved for a favorable report and it carried. Senator Apodaca will handle this bill on the floor.

S. B. 248 Choice of Hearing Aid Specialist

Senator Hartsell was asked to introduce the bill. Senate Bill 656 adds hearing aid specialists to the list of providers from which an individual has the right to choose the provider of services under a health benefit plan. The bill also increases the amount of the fee for licensure that the Board may assess from \$250 to \$500. Senator Davis moved for a favorable report and it carried.

The meeting adjourned at 10:35 AM.



Senator Tom Apodaca, Chair
Presiding



Debbie Lown, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

Wednesday, June 05, 2013

Senator Apodaca,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3, BUT FAVORABLE AS TO
SENATE COMMITTEE SUBSTITUTE BILL**

HB 473 (CS#3)

NC Captive Insurance Act.

Draft Number: H473-PCS10418-TPx-43

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 1

Senator Wesley Meredith will handle HB 473



**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

Thursday, June 06, 2013

Senator Apodaca,
submits the following with recommendations as to passage:

FAVORABLE

HB 650 Guaranty Association Act Amendments.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

SB 248 (CS#1) Choice of Hearing Aid Specialist.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO
SENATE COMMITTEE SUBSTITUTE BILL**

HB 240 (CS#1) Insurance Technical/Clarifying Changes.-AB
Draft Number: H240-PCS70446-TP-48
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

HB 340 (CS#1) Limited Lines Travel Insurance.
Draft Number: H340-PCS10422-RG-16
Sequential Referral: None
Recommended Referral: Finance
Long Title Amended: No

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO
SENATE COMMITTEE SUBSTITUTE BILL**

HB 649 (CS#2) Small Group Health Ins. Technical Changes.
Draft Number: H649-PCS10421-TK-44
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes



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INSURANCE COMMITTEE REPORT
Thursday, June 06, 2013

PAGE 2

TOTAL REPORTED: 5

Senator Tom Apodaca will handle HB 650
Senator Fletcher Hartsell will handle SB 248
Senator Tom Apodaca will handle HB 240
Senator Tom Apodaca will handle HB 340
Senator Ralph Hise will handle HB 649



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

H

3

HOUSE BILL 240

Committee Substitute Favorable 4/4/13

Third Edition Engrossed 4/11/13

Short Title: Insurance Technical/Clarifying Changes.-AB

(Public)

Sponsors:

Referred to:

March 7, 2013

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE CHOICES FOR HEALTH INSURANCE IN NORTH CAROLINA BY EXEMPTING HEALTH INSURANCE COMPANIES FROM OUTDATED RISK EXPOSURE REQUIREMENTS; TO REMOVE A PHOTO IDENTIFICATION REQUIREMENT FOR NEW DOMESTIC COMPANIES; TO HELP MORTGAGE GUARANTY COMPANIES ADJUST THEIR CAPITAL AND SURPLUS REQUIREMENTS; TO REVISE CERTAIN RISK-BASED CAPITAL REQUIREMENTS IN ORDER TO MAINTAIN NORTH CAROLINA'S NAIC ACCREDITATION; TO CLARIFY CONSUMER CHOICE IN HOMEOWNER'S COVERAGE FOR WIND AND HAIL; TO CLARIFY THE CERTIFICATION REQUIREMENTS FOR AN ACTUARY WHO PRESENTS A SCHEDULE OF PREMIUM RATES; TO SHORTEN CERTAIN TIME PERIODS FOR AN EXTERNAL REVIEW BY THE COMMISSIONER OF CERTAIN INSURER DETERMINATIONS; TO EXPAND ACCESS OF COVERAGE TO BUSINESSES WHO NEED BLANKET ACCIDENT AND HEALTH COVERAGE; TO MAKE CERTAIN CONFORMING CHANGES RELATED TO THE RENAMING OF THE OFFICE OF MANAGED CARE PATIENT ASSISTANCE PROGRAM AS HEALTH INSURANCE SMART NC; TO AMEND THE DEFINITION OF PRIVATE PASSENGER MOTOR VEHICLE; TO CLARIFY WHEN AN INSURER CAN COMMUNICATE WITH THE INSURED AFTER A PUBLIC ADJUSTER HAS BEEN RETAINED; AND TO CLARIFY WHEN AN AUTOMATIC STAY OF PROOF OF LOSS REQUIREMENTS, PREMIUM AND DEBT DEFERRALS, AND LOSS ADJUSTMENTS ARE TRIGGERED; AND TO PROVIDE NOTICE AND AN OPPORTUNITY FOR A HEARING WHEN A SUPERIOR COURT JUDGE IS CALLED UPON TO SELECT AN UMPIRE IN CERTAIN PROPERTY INSURANCE DISPUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-105 reads as rewritten:

"§ 58-3-105. Limitation of risk.

Except as otherwise provided in Articles 1 through 64 of this Chapter, no insurer doing business in this State shall expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured shall be deducted in determining the limitation of risk prescribed in this section. This section shall not apply to (i) life insurance, (ii) accident and health insurance, (iii) or to the insurance of marine risks, or marine protection and indemnity risks, or (iv) workers' compensation or employer's liability risks, or to and (v) certificates of title or title guaranties of title or policies of title insurance. For the purpose of determining the limitation of



1 risk under any provision of Articles 1 through 64 of this Chapter, "surplus to policyholders"
2 shall

- 3 (1) Be deemed to include any voluntary reserves, or any part thereof, which are
4 not required by or pursuant to law, and
5 (2) Be determined from the last sworn statement of such insurer on file with the
6 Commissioner pursuant to law, or by the last report on examination filed by
7 the Commissioner, whichever is more recent at the time of assumption of
8 such risk.

9 In applying the limitation of risk under any provision of Articles 1 through 64 of this
10 Chapter to alien insurers, such provision shall be deemed to refer to the exposure to risk and to
11 the surplus to policyholders of the United States branch of such alien insurer."

12 **SECTION 2.** G.S. 58-7-37(a) reads as rewritten:

13 **"§ 58-7-37. Background of incorporators and proposed management personnel.**

14 (a) Before a license is issued to a new domestic insurance company, each key person
15 must furnish the Commissioner a complete set of the applicant's ~~fingerprints and a recent~~
16 ~~passport-size full-face photograph of the applicant~~ fingerprints. The applicant's fingerprints
17 shall be certified by an authorized law enforcement officer. The fingerprints of every applicant
18 shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal
19 history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of
20 the fingerprints to the Federal Bureau of Investigation for a national criminal history record
21 check. An applicant shall pay the cost of the State and any national criminal history record
22 check of the applicant."

23 **SECTION 3.(a)** G.S. 58-10-125(l) reads as rewritten:

24 **"§ 58-10-125. Policyholders position and capital and surplus requirements.**

25 ...
26 (l) Any waiver shall be (i) for a specified period of time not to exceed two years and
27 (ii) subject to any terms and conditions that the Commissioner shall deem best suited to
28 restoring the mortgage guaranty insurer's minimum policyholders position required by
29 subsection (a) of this section. ~~Notwithstanding any other provision in this section, the~~
30 ~~Commissioner shall not grant a waiver that would extend beyond July 1, 2015."~~

31 **SECTION 3.(b)** Section 2 of S.L. 2009-254, as rewritten by Section 2 of S.L.
32 2010-40, reads as rewritten:

33 **"SECTION 2.** This act becomes effective July 1, 2009, and expires July 1, 2015-2009."

34 **SECTION 4.** G.S. 58-12-11(b)(3) reads as rewritten:

35 **"§ 58-12-11. Company action level event.**

36 ...
37 (b) In the event of a company action level event, the insurer shall prepare and submit to
38 the Commissioner a comprehensive financial plan that:

- 39 ...
40 (3) Provides forecasts of the insurer's financial results in the current year and at
41 least the four succeeding years (except for health organizations, which must
42 provide forecasts in the current year and at least the two succeeding years),
43 both in the absence of proposed corrective actions and giving effect to the
44 proposed corrective actions, including forecasts of statutory balance sheets,
45 operating income, net income, ~~capital, or surplus~~ capital and surplus, and
46 risk-based capital levels (the forecasts for both new and renewal business
47 should include separate forecasts for each major line of business and
48 separately identify each significant income, expense, and benefit
49 component). ~~For a health organization, the forecasted financial results shall~~
50 ~~be for the current year and at least two succeeding years and shall include~~

statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels."

SECTION 5. G.S. 58-12-35(a) reads as rewritten:

"§ 58-12-35. Confidentiality and prohibition on announcements.

(a) All risk-based capital reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and the risk-based capital plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the Commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer that are filed with the Commissioner constitute information that shall be kept confidential by the Commissioner. This information shall not be made public ~~or be and shall not be~~ subject to subpoena, discovery, or admissible in evidence in any private civil action, other than by the Commissioner, and then only for the purpose of enforcement actions taken by the Commissioner under this Article or any other provision of this Chapter. In order to assist in the performance of the Commissioner's duties, the Commissioner may share and receive confidential and privileged risk-based capital information in a manner consistent with that information shared and received pursuant to G.S. 58-2-132(g) and (h). Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection."

SECTION 6. G.S. 58-30-60(b) reads as rewritten:

"§ 58-30-60. Commissioner's summary orders and supervision proceedings.

(b) The Commissioner may consider any or all of the following standards to determine whether the continued operation of any licensed insurer is hazardous to its policyholders, creditors, or the general public:

- (1) Adverse findings reported in financial condition and market conduct examination reports; reports, audit reports, and actuarial opinions, reports, or summaries;
- (2) The NAIC Insurance Regulatory Information System and its related other financial analysis solvency tools and reports;
- (3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income that could lead to an impairment of capital and surplus;
- (4) Whether an insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items, including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;
- (5) The ability of an assuming reinsurer to perform and whether the existing insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (6) Whether an insurer's operating loss in the last 12-month period or any shorter period of time, including including, but not limited to, net capital

- gain or loss, changes in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining policyholders' surplus in excess of the minimum required;
- (6a) Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining policyholders' surplus in excess of the minimum required;
- (7) Whether a reinsurer, obligor, or any affiliate, subsidiary, or reinsurer entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation; obligation and which in the opinion of the Commissioner may affect the solvency of the insurer;
- (8) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect an insurer's solvency;
- (9) Whether any controlling person of an insurer is delinquent in the transmitting to or payment of net premiums to the insurer;
- (10) The age and collectibility of receivables;
- (11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess ~~or~~ and demonstrate the competence, fitness, or reputation considered by the Commissioner to be necessary to serve the insurer in that position;
- (12) Whether the management of an insurer has failed to respond to the Commissioner's inquiries about the condition of the insurer or has furnished false and misleading information in response to an inquiry by the Commissioner;
- (12a) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner;
- (13) Whether the management of an insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the insurer's books;
- (14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; ~~or~~
- (15) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity ~~problems; problems;~~
- (16) Whether management has established reserves that do not comply with minimum standards established by State insurance laws, regulations, statutory accounting standards, sound actuarial principles, and standards of practice;
- (17) Whether management persistently engages in material under reserving that results in adverse development;
- (18) Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or
- (19) Any other finding determined by the Commissioner to be hazardous to the insurer's policyholders, creditors, or general public.

To determine an insurer's financial condition under this Article, the Commissioner may: disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding; make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates of an insurer; refuse to recognize the stated value of accounts receivable if the insurer's ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

If upon examination or at any other time the Commissioner has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the domestic insurer gives its consent, then the Commissioner shall upon the Commissioner's determination:

- (1) ~~Notify~~ Issue an order notifying the insurer of that determination; and
- (2) Furnish to the insurer a written list of the Commissioner's requirements to abate that ~~determination~~ determination that may include any of the following:

~~The written list may include requirements that the insurer: reduce~~

- a. A reduction in the total amount of present and potential liability for policy benefits by ~~reinsurance; reinsurance.~~
- b. ~~reduce, suspend, or limit~~ A reduction, suspension, or limitation of the volume of insurance being accepted or ~~renewed; renewed.~~
- c. ~~reduce~~ A reduction in general insurance and commission expenses by specified ~~methods; methods.~~
- d. An increase in the insurer's capital and ~~surplus; surplus.~~
- e. ~~suspend or limit its~~ A suspension or limitation in the insurer's declaration and payment of dividends to its stockholders or ~~policyholders; policyholders.~~
- f. ~~file reports~~ The filing of reports in a form acceptable to the Commissioner concerning the market value of its ~~assets; assets.~~
- g. ~~limit or withdraw~~ A limitation or withdrawal from certain investments or ~~discontinue the discontinuance of~~ certain investment practices to the extent the Commissioner considers ~~to be necessary; necessary.~~
- h. ~~document~~ Documentation of the adequacy of premium rates in relation to the risks ~~insured; insured.~~
- i. ~~or file~~ The filing, in addition to regular annual financial statements, of interim financial reports on the form adopted by the NAIC or on such format prescribed by the ~~Commissioner~~ Commissioner.
- j. The correction of corporate governance practice deficiencies.
- k. The adoption and utilization of governance practices acceptable to the Commissioner.
- l. The provision of a business plan to the Commissioner in order to continue to transact business in the State.

Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, the Commissioner may adjust rates for any non-life insurance product include ~~in the list of requirements any rate adjustments for any kinds of insurance~~ written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer."

SECTION 7. G.S. 58-31-45 reads as rewritten:

1 **"§ 58-31-45. Report required of Commissioner.**

2 The Commissioner must submit to the Governor a full report of his official action under
3 this Article, with such recommendations as commend themselves to him, ~~and it shall be~~
4 ~~embodied in or attached to his biennial report to the General Assembly.~~ the Commissioner."

5 **SECTION 8.** G.S. 58-36-42 reads as rewritten:

6 **"§ 58-36-42. Development of policy form or endorsement for residential property**
7 **insurance that does not include coverage for perils of windstorm or hail.**

8 With respect to residential property insurance under its jurisdiction, the Bureau shall
9 develop an optional policy form or endorsement to be filed with the Commissioner for approval
10 that provides residential property insurance coverage in the coastal and beach areas defined in
11 G.S. 58-45-5(2) and (2b) without coverage for the perils of windstorm or hail. Insurers that sell
12 such policies shall comply with the provisions of G.S. 58-44-60 and through such compliance
13 shall be deemed to have given notice to all insured and persons claiming benefits under such
14 policies that such policies do not include coverage for the perils of windstorm or hail."

15 **SECTION 9.** G.S. 58-50-131(a) reads as rewritten:

16 **"§ 58-50-131. Premium rates for health benefit plans; approval authority; hearing.**

17 (a) No schedule of premium rates for coverage for a health benefit plan subject to this
18 act, or any amendment to the schedule, shall be used in conjunction with any such health
19 benefit plan until a copy of the schedule of premium rates or premium rate amendment has
20 been filed with and approved by the Commissioner. Any schedule of premium rates or
21 premium rate amendment filed under this section shall be established in accordance with
22 G.S. 58-50-130(b). The schedule of premium rates shall not be excessive, unjustified,
23 inadequate, or unfairly discriminatory and shall exhibit a reasonable relationship to the benefits
24 provided by the contract of insurance. Each filing shall include a certification by ~~an individual~~
25 ~~who is a member in good standing with the Society of Actuaries.~~ an actuary who is a member of
26 the American Academy of Actuaries and qualified to provide such certifications as described in
27 the U.S. Qualifications Standards promulgated by the American Academy of Actuaries
28 pursuant to its Code of Professional Conduct."

29 **SECTION 10.** G.S. 58-50-82 reads as rewritten:

30 **"§ 58-50-82. Expedited external review.**

31 ...
32 (b) Within ~~three business two days of~~ after receiving a request for an expedited external
33 review, the Commissioner shall complete all of the following:

34 ...
35 (c) As soon as possible, but within the same ~~business day of~~ after receiving notice
36 under subdivision (b)(2) of this section that the request has been assigned to a review
37 organization, the insurer or its designee utilization review organization shall provide or transmit
38 all documents and information considered in making the noncertification appeal decision or the
39 second-level grievance review decision to the assigned review organization electronically or by
40 telephone or facsimile or any other available expeditious method. A copy of the same
41 information shall be sent by the same means or other expeditious means to the covered person
42 or the covered person's representative who made the request for expedited external review.

43 ...
44 (e) As expeditiously as the covered person's medical condition or circumstances
45 require, but not more than ~~four business~~ three days after the date of receipt of the request for an
46 expedited external review, the assigned organization shall make a decision to uphold or reverse
47 the noncertification, noncertification appeal decision, or second-level grievance review
48 decision and notify the covered person, the covered person's provider who performed or
49 requested the service, the insurer, and the Commissioner of the decision. In reaching a decision,
50 the assigned organization is not bound by any decisions or conclusions reached during the

insurer's utilization review process or internal grievance process under G.S. 58-50-61 and G.S. 58-50-62.

...."

SECTION 11. G.S. 143-730 reads as rewritten:

"§ 143-730. ~~Managed Care Patient Assistance Program~~Health Insurance Smart NC.

(a) The Office of Managed Care Patient Assistance Program is ~~established in the Department of Insurance~~ shall hereafter be known as the Health Insurance Smart NC.

(b) The ~~Managed Care Patient Assistance Program~~Health Insurance Smart NC shall provide information and assistance to individuals enrolled in ~~managed health~~ care plans. The ~~Managed Care Patient Assistance Program~~ shall have expertise and experience in both health care and advocacy and will assume the specific duties and responsibilities set forth in subsection (c) of this section.

(c) ~~The duties and responsibilities of the Managed Care Patient Assistance Program are as follows:~~Health Insurance Smart NC shall have the responsibility and duty to:

(1) Develop and distribute educational and informational materials for consumers, explaining their rights and responsibilities as ~~managed health~~ care plan enrollees.

(2) Answer inquiries posed by consumers and ~~refer inquiries of a regulatory nature to staff within the Department of Insurance~~ consumers.

(3) Advise ~~managed health~~ care plan enrollees about the utilization review process.

(4) Assist enrollees with the grievance, appeal, and external review procedures established by Article 50 of Chapter 58 of the General Statutes.

(5) Publicize the ~~Office of the Managed Care Patient Assistance Program~~Health Insurance Smart NC.

(6) Compile data on the activities of the Office and evaluate such data to make recommendations as to the needed activities of the Office.

(d) ~~The Director of the Managed Care Patient Assistance Program shall annually report the activities of the Managed Care Patient Assistance Program, including the types of appeals, grievances, and complaints received and the outcome of these cases. The report shall be submitted to the General Assembly, upon its convening or reconvening, and shall make recommendations as to efforts that could be implemented to assist managed care consumers.~~

(e) All health information in the possession of the ~~Managed Care Patient Assistance Program~~Health Insurance Smart NC is confidential and is not a public record pursuant to G.S. 132-1 or any other applicable statute.

For purposes of this section, "health information" means any of the following:

(1) Information relating to the past, present, or future physical or mental health or condition of an individual.

(2) Information relating to the provision of health care to an individual.

(3) Information relating to the past, present, or future payment for the provision of health care to an individual.

(4) Information, in any form, that identifies or may be used to identify an individual, that is created by, provided by, or received from any of the following:

a. An individual or an individual's spouse, parent, legal guardian, or designated representative.

b. A health care provider, health plan, employer, health care clearinghouse, or an entity doing business with these entities."

SECTION 12. G.S. 58-6-25(d)(4) reads as rewritten:

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

...

(4) Money appropriated for the office of ~~Managed Care Patient Assistance Program~~Health Insurance Smart NC established under G.S. 143-730 to pay the actual costs of administering the program."

SECTION 13. G.S. 58-50-61(h) reads as rewritten:

"§ 58-50-61. Utilization review.

...
(h) Notice of Noncertification. – A written notification of a noncertification shall include all reasons for the noncertification, including the clinical rationale, the instructions for initiating a voluntary appeal or reconsideration of the noncertification, and the instructions for requesting a written statement of the clinical review criteria used to make the noncertification. An insurer shall provide the clinical review criteria used to make the noncertification to any person who received the notification of the noncertification and who follows the procedures for a request. An insurer shall also inform the covered person in writing about the availability of assistance from ~~the Managed Care Patient Assistance Program~~Health Insurance Smart NC, including the telephone number and address of the Program."

SECTION 14. G.S. 58-50-61(k)(6) reads as rewritten:

"§ 58-50-61. Utilization review.

...
(6) Notice of the availability of assistance from ~~the Managed Care Patient Assistance Program~~Health Insurance Smart NC, including the telephone number and address of the Program."

SECTION 15. G.S. 58-50-61(m) reads as rewritten:

"§ 58-50-61. Utilization review.

...
(m) Disclosure Requirements. – In the certificate of coverage and member handbook provided to covered persons, an insurer shall include a clear and comprehensive description of its utilization review procedures, including the procedures for appealing noncertifications and a statement of the rights and responsibilities of covered persons, including the voluntary nature of the appeal process, with respect to those procedures. An insurer shall also include in the certificate of coverage and the member handbook information about the availability of assistance from ~~the Managed Care Patient Assistance Program~~Health Insurance Smart NC, including the telephone number and address of the Program. An insurer shall include a summary of its utilization review procedures in materials intended for prospective covered persons. An insurer shall print on its membership cards a toll-free telephone number to call for utilization review purposes."

SECTION 16. G.S. 58-50-62 reads as rewritten:

"§ 58-50-62. Insurer grievance procedures.

...
(c) Grievance Procedures. – Every insurer shall have written procedures for receiving and resolving grievances from covered persons. A description of the grievance procedures shall be set forth in or attached to the certificate of coverage and member handbook provided to covered persons. The description shall include a statement informing the covered person that the grievance procedures are voluntary and shall also inform the covered person about the availability of the Commissioner's office for assistance, including the telephone number and address of the office. ~~The description shall also inform the covered person about the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program.~~

...
(e) First-Level Grievance Review. – A covered person or a covered person's provider acting on the covered person's behalf may submit a grievance.

(2) An insurer shall issue a written decision, in clear terms, to the covered person and, if applicable, to the covered person's provider, within 30 days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who initially handled the matter that is the subject of the grievance and, if the issue is a clinical one, at least one of whom shall be a medical doctor with appropriate expertise to evaluate the matter. Except as provided in subdivision (3) of this subsection, if the decision is not in favor of the covered person, the written decision issued in a first-level grievance review shall contain:

...
f. Notice of the availability of assistance from the ~~Managed Care Patient Assistance Program~~, Health Insurance Smart NC, including the telephone number and address of the Program.

...
(f) **Second-Level Grievance Review.** – An insurer shall establish a second-level grievance review process for covered persons who are dissatisfied with the first-level grievance review decision or a utilization review appeal decision. A covered person or the covered person's provider acting on the covered person's behalf may submit a second-level grievance.

(1) An insurer shall, within 10 business days after receiving a request for a second-level grievance review, make known to the covered person:

...
c. The availability of assistance from the ~~Managed Care Patient Assistance Program~~, Health Insurance Smart NC, including the telephone number and address of the Program.

...."

SECTION 17. G.S. 58-50-62(h)(9) reads as rewritten:

"§ 58-50-62. Insurer grievance procedures.

...
(9) Notice of the availability of assistance from the ~~Managed Care Patient Assistance Program~~, Health Insurance Smart NC, including the telephone number and address of the Program."

SECTION 18. G.S. 58-50-80(b)(3) reads as rewritten:

"§ 58-50-80. Standard external review.

...
(3) Notify in writing the covered person and the covered person's provider who performed or requested the service whether the request is complete and whether the request has been accepted for external review. If the request is complete and accepted for external review, the notice shall include a copy of the information that the insurer provided to the Commissioner pursuant to subdivision (b)(1) of this section, and inform the covered person that the covered person may submit to the assigned independent review organization in writing, within seven days after the receipt of the notice, additional information and supporting documentation relevant to the initial denial for the organization to consider when conducting the external review. If the covered person chooses to send additional information to the assigned independent review organization, then the covered person shall at the same time and by the same means, send a copy of that information to the insurer. The Commissioner shall also notify the covered person in writing of the availability of assistance from the ~~Managed Care Patient Assistance Program~~, Health Insurance Smart NC, including the telephone number and address of the ~~Program~~, Health Insurance Smart NC."

SECTION 19. G.S. 58-51-75 reads as rewritten:

"§ 58-51-75. Blanket accident and health insurance defined.

(a) Any policy or contract of insurance against death or injury resulting from accident or from accidental means which insures a group of persons conforming to the requirements of one of the following subdivisions (1) to (7), inclusive, shall be deemed a blanket accident policy. Any policy or contract which insures a group of persons conforming to the requirements of one of the following subdivisions (3), (5), (6) or (7) against total or partial disability, excluding such disability from accident or from accidental means, shall be deemed a blanket health insurance policy. Any policy or contract of insurance which combines the coverage of blanket accident insurance and of blanket health insurance on such a group of persons shall be deemed a blanket accident and health insurance policy:

- ~~(1) Under a policy or contract issued to any railroad, steamship, motorbus or airplane carrier of passengers, which shall be deemed the policyholder, a group defined as all persons who may become such passengers may be insured against death or bodily injury either while, or as a result of, being such passengers.~~
- (1) Under a policy or contract issued to any common carrier or to any operator, owner, or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group defined as all persons or all persons of a class who may become passengers on the common carrier or the means of transportation.
- (2) Under a policy or contract issued to an employer, or the trustee of a fund established by the employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employee against death or bodily injury resulting while, or from, being exposed to such exceptional hazard.
- (3) Under a policy or contract issued to a college, school or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.
- (4) Under a policy or contract issued in the name of any volunteer fire department, emergency medical service, rescue first aid, civil defense, or any other such volunteer organization, which shall be deemed the policyholder, covering all of the any group of members or other participants defined by reference to specified hazards incident to any activities or operations sponsored or supervised by such policyholder.~~of such department.~~
- (5) Under a policy or contract issued to and in the name of an incorporated or unincorporated association of persons having a common interest or calling, which association shall be deemed the policyholder, having not less than 25 members, and formed for purposes other than obtaining insurance, covering all of the members of such association.
- (6) Under a policy or contract issued to the head of a family, household, who shall be deemed the policyholder, whereunder the benefits thereof shall provide for the payment by the insurer of amounts for expenses incurred by the policyholder on account of hospitalization or medical or surgical aid for ~~himself, the policyholder,~~ his or her spouse, his or her child or children, or other persons chiefly dependent on him or her for support and maintenance.
- (7) Under a policy or contract issued to or in the name of any municipal or county recreation commission or ~~department~~ department, sports team, league, tournament, or sponsor thereof, which shall be deemed the ~~policyholder.~~ policyholder, covering participants, members, coaches, counselors, employees, officials, or supervisors defined by reference to

specified hazards incident to activities or operations sponsored or supervised by such policyholder or on the premises of such policyholder.

(8) Under a policy or contract issued to any incorporated or unincorporated religious, charitable, recreational, educational, athletic, or civic organization or branch thereof, which shall be deemed the policyholder, covering any group of members, participants, or volunteers defined by reference to specified hazards incident to activities or operations sponsored or supervised by such policyholder or on the premises of such policyholder.

(9) Under a policy or contract issued to any overnight, day, religious, equestrian, adventure, wilderness, athletic, or other camp, or the sponsor thereof, which shall be deemed the policyholder, covering any group of campers, participants, counselors, employees, volunteers, or supervisors defined by reference to specified hazards incident to activities or operations sponsored or supervised by such policyholder or on the premises of such policyholder.

(10) Under a policy or contract issued to any bank, credit union, or other financial institution, which shall be deemed the policyholder, to insure any group of account holders or members of the policyholder and as defined by reference in the policy or contract, in which premiums for such insurance are paid by the policyholder, as authorized by the account holder or member from account holder or member funds on deposit with the policyholder, collected from the account holders or members by way of account billing or member billing, or by the policyholder and account holders jointly.

(11) Any other risk or class of risks which, in the discretion of the Commissioner, may be properly eligible for blanket accident, health, or accident and health insurance. The discretion of the Commissioner may be exercised on an individual risk basis or class of risks, or both after the Commissioner has made the following findings:

a. The issuance of the blanket policy is not contrary to the best interest of the public.

b. The issuance of the blanket policy would result in economies of acquisition or administration.

c. The benefits are reasonable in relation to the premiums charged.

(b) All benefits under any blanket accident, blanket health or blanket accident and health insurance policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, or to a person or persons chiefly dependent upon the person insured for support and maintenance, except that if the person insured be a minor, such benefits may be made payable to his parent, guardian, or other person actually supporting him, ~~or to a person or persons chiefly dependent upon him for support and maintenance.~~ the minor.

...."

SECTION 20. G.S. 58-40-10(1)b. reads as rewritten:

"§ 58-40-10. Other definitions.

As used in this Article and in Articles 36 and 37 of this Chapter:

(1) "Private passenger motor vehicle" means:

a. A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or

b. A motor vehicle that is a pickup truck or van that is owned by an individual or by husband and wife or individuals who are residents of the same household if it:

1. Has a gross vehicle weight as specified by the manufacturer of less than ~~10,000~~14,000 pounds; and
2. Is not used for the delivery or transportation of goods or materials unless such use is (i) incidental to the insured's business of installing, maintaining, or repairing furnishings or equipment, or (ii) for farming or ranching.

Such vehicles owned by a family farm copartnership or a family farm corporation shall be considered owned by an individual for the purposes of this section; or

- c. A motorcycle, motorized scooter or other similar motorized vehicle not used for commercial purposes.

...."

SECTION 21. G.S. 58-33A-65(f)(3) reads as rewritten:

"§ 58-33A-65. Contract between public adjuster and insured.

...

(f) Before the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

...

- (3) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim. ~~Once a public adjuster has been retained, the company adjuster or other insurance representative may not communicate directly with the insured without the permission or consent of the public adjuster or the insured's legal counsel.~~

...."

SECTION 22.(a) G.S. 58-2-46 reads as rewritten:

"§ 58-2-46. State of emergency~~disaster~~ automatic stay of proof of loss requirements; premium and debt deferrals; loss adjustments for separate windstorm policies.

Whenever (i) a state of ~~emergency~~disaster is proclaimed for the State or for an area within the State under ~~G.S. 166A-19.21~~ G.S. 166A-19.20 or whenever the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121, et seq., as ~~amended~~amended and (ii) if the Commissioner has issued an order declaring subdivisions (1) through (4) herein effective for the specific disaster:

- (1) The application of any provision in an insurance policy insuring real property and its contents that are located within the geographic area designated in the proclamation or declaration, which provision requires an insured to file a proof of loss within a certain period of time after the occurrence of the loss, shall be stayed for the time period not exceeding the earlier of (i) the expiration of the disaster proclamation or declaration and all renewals of the proclamation or 45 days, whichever is later, proclamation or (ii) the expiration of the Commissioner's order declaring subdivisions (1) through (4) herein effective for the specific disaster, as determined by the Commissioner.
- (2) As used in this subdivision, "insurance company" includes a service corporation, HMO, MEWA, surplus lines insurer, and the underwriting associations under Articles 45 and 46 of this Chapter. All insurance companies, premium finance companies, collection agencies, and other persons subject to this Chapter shall give their customers who reside within the geographic area designated in the proclamation or declaration the option of deferring premium or debt payments that are due during the earlier of (i)

~~the time period covered by the proclamation or declaration~~ ~~declaration or (ii)~~
the time period prior to the expiration of the Commissioner's order declaring subdivisions (1) through (4) herein effective for the specific disaster, as determined by the Commissioner. This deferral period shall be 30 days from the last day the premium or debt payment may be made under the terms of the policy or contract. This deferral period shall also apply to any statute, rule, or other policy or contract provision that imposes a time limit on an insurer, insured, claimant, or customer to perform any act during the time period covered by the proclamation or declaration, including the transmittal of information, with respect to insurance policies or contracts, premium finance agreements, or debt instruments when the insurer, insured, claimant, or customer resides or is located in the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to individuals who reside within the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to individuals who reside within the geographic area designated in the proclamation or declaration. The Commissioner may extend any deferral period in this subdivision, depending on the nature and severity of the proclaimed or declared disaster. No additional rate or contract filing shall be necessary to effect any deferral period.

(3) With respect to health benefit plans, after a deferral period has expired, all premiums in arrears shall be payable to the insurer. If premiums in arrears are not paid, coverage shall lapse as of the date premiums were paid up, and preexisting conditions shall apply as permitted under this Chapter; and the insured shall be responsible for all medical expenses incurred since the effective date of the lapse in coverage.

(4) In addition to the requirements of G.S. 58-45-35(e), for separate windstorm policies that are written by an insurer other than the Underwriting Association, losses shall be adjusted by the insurer that issued the property insurance and not by the insurer that issued the windstorm policy. The insurer that issued the windstorm policy shall reimburse the insurer that issued the property insurance for reasonable expenses incurred by that insurer in adjusting the windstorm losses."

SECTION 22.(b) G.S. 58-2-47 reads as rewritten:

"§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer provisions.

Regardless of whether a state of emergency or disaster has been proclaimed under G.S. 166A-19.20 or G.S. 166A-19.21 or declared under the Stafford Act, whenever an incident beyond the Department's reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the Department, the Commissioner may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the Commissioner or Department or upon persons subject to the Commissioner's jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the Department have been substantially affected. The order shall remain in effect for a period not exceeding 30 days. The order may be renewed by the Commissioner for successive periods not exceeding 30 days each for as long as the operations

of the Department remain substantially affected, up to a period of one year from the effective date of the initial order."

SECTION 22.(c) G.S. 58-33-70(e) reads as rewritten:

"§ 58-33-70. Special provisions for adjusters and motor vehicle damage appraisers.

...

(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in the other state (if that state requires a license), to act as an adjuster in this State without a North Carolina license only for an insurance company authorized to do business in this State, for emergency insurance adjustment work, for a period to be determined by the Commissioner, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work. As used in this subsection, "emergency insurance adjustment work" includes, but is not limited to, (i) adjusting of a single loss or losses arising out of an event or catastrophe common to all of those losses or (ii) adjusting losses in any area declared to be a state of emergency or disaster by the Governor under G.S. 166A-19.20 or G.S. 166A-19.21 or by the President of the United States under applicable federal law."

SECTION 22.(d) G.S. 58-44-70(a) reads as rewritten:

"Part 2. Mediation of Emergency or Disaster-Related Property Insurance Claims.

"§ 58-44-70. Purpose and scope.

(a) This Part provides for a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of an event for which there is a state of ~~emergency~~disaster declared within 60 days of the event. This Part applies only (i) if a state of ~~emergency~~disaster has been proclaimed for the State or for an area within the State by the Governor or by a resolution of the General Assembly under ~~G.S. 166A-19.20; G.S. 166A-19.21~~ or (ii) if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part."

SECTION 22.(e) G.S. 58-44-75(2) reads as rewritten:

"§ 58-44-75. Definitions.

As used in this Part:

...

(2) ~~Disaster. As the term "emergency" is defined in G.S. 166A-19.3(6)."~~

SECTION 23. G.S. 58-44-35 reads as rewritten:

"§ 58-44-35. Judge to select umpire.

The ~~Any~~ resident judge of the superior court of the district in which the property insured is located is designated as the judge of the court of record to select the umpire referred to in the standard form of ~~policy~~policy as set forth in G.S. 58-44-16(f)(14). The judge may not select the umpire until all of the following conditions have been met:

- (1) Proof of notice to all parties of record has been filed with the court, and at least 15 days have passed since the filing of the proof of notice.
- (2) Upon the request of any party of record, the judge has conducted a hearing. The hearing by the judge shall be governed by the practice for hearings in other civil actions before a judge without a jury, and shall be limited to the issue of umpire selection."

1 **SECTION 24.** Section 10 of this act becomes effective January 1, 2016. Section 22
2 of this act is effective when it becomes law. Section 23 of this act becomes effective October 1,
3 2013. The remainder of this act becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

H

D

HOUSE BILL 240

Committee Substitute Favorable 4/4/13

Third Edition Engrossed 4/11/13

PROPOSED SENATE COMMITTEE SUBSTITUTE H240-CSTP-48 [v.3]

6/4/2013 2:39:49 PM

Short Title: Insurance Technical/Clarifying Changes.-AB

(Public)

Sponsors:

Referred to:

March 7, 2013

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE CHOICES FOR HEALTH INSURANCE IN NORTH CAROLINA BY EXEMPTING HEALTH INSURANCE COMPANIES FROM OUTDATED RISK EXPOSURE REQUIREMENTS; TO REMOVE A PHOTO IDENTIFICATION REQUIREMENT FOR NEW DOMESTIC COMPANIES; TO HELP MORTGAGE GUARANTY COMPANIES ADJUST THEIR CAPITAL AND SURPLUS REQUIREMENTS; TO REVISE CERTAIN RISK-BASED CAPITAL REQUIREMENTS IN ORDER TO MAINTAIN NORTH CAROLINA'S NAIC ACCREDITATION; TO CLARIFY CONSUMER CHOICE IN HOMEOWNER'S COVERAGE FOR WIND AND HAIL; TO CLARIFY THE CERTIFICATION REQUIREMENTS FOR AN ACTUARY WHO PRESENTS A SCHEDULE OF PREMIUM RATES; TO SHORTEN CERTAIN TIME PERIODS FOR AN EXTERNAL REVIEW BY THE COMMISSIONER OF CERTAIN INSURER DETERMINATIONS; TO EXPAND ACCESS OF COVERAGE TO BUSINESSES WHO NEED BLANKET ACCIDENT AND HEALTH COVERAGE; TO MAKE CERTAIN CONFORMING CHANGES RELATED TO THE RENAMING OF THE OFFICE OF MANAGED CARE PATIENT ASSISTANCE PROGRAM AS HEALTH INSURANCE SMART NC; TO AMEND THE DEFINITION OF PRIVATE PASSENGER MOTOR VEHICLE; TO CLARIFY WHEN AN INSURER CAN COMMUNICATE WITH THE INSURED AFTER A PUBLIC ADJUSTER HAS BEEN RETAINED; AND TO CLARIFY WHEN AN AUTOMATIC STAY OF PROOF OF LOSS REQUIREMENTS, PREMIUM AND DEBT DEFERRALS, AND LOSS ADJUSTMENTS ARE TRIGGERED; TO PROVIDE NOTICE AND AN OPPORTUNITY FOR A HEARING WHEN A SUPERIOR COURT JUDGE IS CALLED UPON TO SELECT AN UMPIRE IN CERTAIN PROPERTY INSURANCE DISPUTES; AND TO ALLOW THE DEPARTMENT OF INSURANCE TO ENFORCE CERTAIN PROVISIONS OF THE PUBLIC HEALTH SERVICE ACT BY REQUIRING INSURANCE COMPANIES TO COMPLY WITH THOSE PROVISIONS WITHIN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-105 reads as rewritten:

"§ 58-3-105. Limitation of risk.

Except as otherwise provided in Articles 1 through 64 of this Chapter, no insurer doing business in this State shall expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders. Any risk or portion of any risk which shall have



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1 been reinsured shall be deducted in determining the limitation of risk prescribed in this section.
2 This section shall not apply to (i) life ~~insurance~~ insurance, (ii) accident and health insurance,
3 ~~(iii) or to the insurance of marine risks, or marine protection and indemnity risks, or (iv)~~
4 ~~workers' compensation or employer's liability risks, or to and (v) certificates of title or title,~~
5 ~~guaranties of title or policies of title insurance.~~ For the purpose of determining the limitation of
6 risk under any provision of Articles 1 through 64 of this Chapter, "surplus to policyholders"
7 shall

- 8 (1) Be deemed to include any voluntary reserves, or any part thereof, which are
9 not required by or pursuant to law, and
10 (2) Be determined from the last sworn statement of such insurer on file with the
11 Commissioner pursuant to law, or by the last report on examination filed by
12 the Commissioner, whichever is more recent at the time of assumption of
13 such risk.

14 In applying the limitation of risk under any provision of Articles 1 through 64 of this
15 Chapter to alien insurers, such provision shall be deemed to refer to the exposure to risk and to
16 the surplus to policyholders of the United States branch of such alien insurer."

17 **SECTION 2.** G.S. 58-7-37(a) reads as rewritten:

18 **"§ 58-7-37. Background of incorporators and proposed management personnel.**

19 (a) Before a license is issued to a new domestic insurance company, each key person
20 must furnish the Commissioner a complete set of the applicant's ~~fingerprints and a recent~~
21 ~~passport size full face photograph of the applicant fingerprints.~~ The applicant's fingerprints
22 shall be certified by an authorized law enforcement officer. The fingerprints of every applicant
23 shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal
24 history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of
25 the fingerprints to the Federal Bureau of Investigation for a national criminal history record
26 check. An applicant shall pay the cost of the State and any national criminal history record
27 check of the applicant."

28 **SECTION 3.(a)** G.S. 58-10-125(l) reads as rewritten:

29 **"§ 58-10-125. Policyholders position and capital and surplus requirements.**

30 ...
31 (l) Any waiver shall be (i) for a specified period of time not to exceed two years and
32 (ii) subject to any terms and conditions that the Commissioner shall deem best suited to
33 restoring the mortgage guaranty insurer's minimum policyholders position required by
34 subsection (a) of this section. ~~Notwithstanding any other provision in this section, the~~
35 ~~Commissioner shall not grant a waiver that would extend beyond July 1, 2015."~~

36 **SECTION 3.(b)** Section 2 of S.L. 2009-254, as rewritten by Section 2 of S.L.
37 2010-40, reads as rewritten:

38 **"SECTION 2.** This act becomes effective July 1, 2009, and ~~expires July 1, 2015.~~ 2009."

39 **SECTION 4.** G.S. 58-12-11(b)(3) reads as rewritten:

40 **"§ 58-12-11. Company action level event.**

41 ...
42 (b) In the event of a company action level event, the insurer shall prepare and submit to
43 the Commissioner a comprehensive financial plan that:

- 44 ...
45 (3) Provides forecasts of the insurer's financial results in the current year and at
46 least the four succeeding years (except for health organizations, which must
47 provide forecasts in the current year and at least the two succeeding years),
48 both in the absence of proposed corrective actions and giving effect to the
49 proposed corrective actions, including forecasts of statutory balance sheets,
50 operating income, net income, ~~capital, or surplus~~ capital and surplus, and
51 risk-based capital levels (the forecasts for both new and renewal business

1 should include separate forecasts for each major line of business and
2 separately identify each significant income, expense, and benefit
3 component). ~~For a health organization, the forecasted financial results shall~~
4 ~~be for the current year and at least two succeeding years and shall include~~
5 ~~statutory balance sheets, operating income, net income, capital and surplus,~~
6 ~~and risk-based capital levels."~~

7 **SECTION 5.** G.S. 58-12-35(a) reads as rewritten:

8 **"§ 58-12-35. Confidentiality and prohibition on announcements.**

9 (a) All risk-based capital reports, to the extent the information therein is not required to
10 be set forth in a publicly available annual statement schedule, and the risk-based capital plans,
11 including the results or report of any examination or analysis of an insurer performed pursuant
12 hereto and any corrective order issued by the Commissioner pursuant to examination or
13 analysis, with respect to any domestic insurer or foreign insurer that are filed with the
14 Commissioner constitute information that shall be kept confidential by the Commissioner. This
15 information shall not be made public ~~or be and~~ shall not be subject to subpoena, discovery, or
16 admissible in evidence in any private civil action, other than by the Commissioner, and then
17 only for the purpose of enforcement actions taken by the Commissioner under this Article or
18 any other provision of this Chapter. In order to assist in the performance of the Commissioner's
19 duties, the Commissioner may share and receive confidential and privileged risk-based capital
20 information in a manner consistent with that information shared and received pursuant to
21 G.S. 58-2-132(g) and (h). Neither the Commissioner nor any person who received documents,
22 materials, or other information while acting under the authority of the Commissioner shall be
23 permitted or required to testify in any private civil action concerning any confidential
24 documents, materials, or information subject to this subsection."

25 **SECTION 6.** G.S. 58-30-60(b) reads as rewritten:

26 **"§ 58-30-60. Commissioner's summary orders and supervision proceedings.**

27 ...

28 (b) The Commissioner may consider any or all of the following standards to determine
29 whether the continued operation of any licensed insurer is hazardous to its policyholders,
30 creditors, or the general public:

- 31 (1) Adverse findings reported in financial condition and market conduct
32 examination ~~reports; reports, audit reports, and actuarial opinions, reports, or~~
33 ~~summaries;~~
34 (2) The NAIC Insurance Regulatory Information System and its ~~related other~~
35 ~~financial analysis solvency tools and reports;~~
36 (3) ~~The ratios of commission expense, general insurance expense, policy~~
37 ~~benefits, and reserve increases as to annual premium and net investment~~
38 ~~income that could lead to an impairment of capital and surplus;~~
39 (4) ~~Whether an insurer's asset portfolio, when viewed in light of current~~
40 ~~economic conditions, is not of sufficient value, liquidity, or diversity to~~
41 ~~assure the insurer's ability to meet its outstanding obligations as they~~
42 ~~mature; Whether the insurer has made adequate provision, according to~~
43 ~~presently accepted actuarial standards of practice, for the anticipated cash~~
44 ~~flows required by the contractual obligations and related expenses of the~~
45 ~~insurer, when considered in light of the assets held by the insurer with~~
46 ~~respect to such reserves and related actuarial items, including, but not~~
47 ~~limited to, the investment earnings on such assets, and the considerations~~
48 ~~anticipated to be received and retained under such policies and contracts;~~
49 (5) The ability of an assuming reinsurer to perform and whether the ~~eeding~~
50 insurer's reinsurance program provides sufficient protection for the insurer's
51 remaining surplus, after taking into account the insurer's cash flow and the

- 1 classes of business written as well as the financial condition of the assuming
2 reinsurer;
- 3 (6) Whether an insurer's operating loss in the last 12-month period or any
4 shorter period of time, including including, but not limited to, net capital
5 gain or loss, changes in nonadmitted assets, and cash dividends paid to
6 shareholders, is greater than fifty percent (50%) of the insurer's remaining
7 policyholders' surplus in excess of the minimum required;
- 8 (6a) Whether the insurer's operating loss in the last 12-month period or any
9 shorter period of time, excluding net capital gains, is greater than twenty
10 percent (20%) of the insurer's remaining policyholders' surplus in excess of
11 the minimum required;
- 12 (7) Whether a reinsurer, obligor, or any affiliate, subsidiary, or reinsurer entity
13 within the insurer's insurance holding company system is insolvent,
14 threatened with insolvency, or delinquent in payment of its monetary or any
15 other obligation; obligation and which in the opinion of the Commissioner
16 may affect the solvency of the insurer;
- 17 (8) Contingent liabilities, pledges, or guaranties that either individually or
18 collectively involve a total amount that in the Commissioner's opinion may
19 affect an insurer's solvency;
- 20 (9) Whether any controlling person of an insurer is delinquent in the
21 transmitting to or payment of net premiums to the insurer;
- 22 (10) The age and collectibility of receivables;
- 23 (11) Whether the management of an insurer, including officers, directors, or any
24 other person who directly or indirectly controls the operation of the insurer,
25 fails to possess ~~or~~ and demonstrate the competence, fitness, or reputation
26 considered by the Commissioner to be necessary to serve the insurer in that
27 position;
- 28 (12) Whether the management of an insurer has failed to respond to the
29 Commissioner's inquiries about the condition of the insurer or has furnished
30 false and misleading information in response to an inquiry by the
31 Commissioner;
- 32 (12a) Whether the insurer has failed to meet financial and holding company filing
33 requirements in the absence of a reason satisfactory to the Commissioner;
- 34 (13) Whether the management of an insurer has filed any false or misleading
35 sworn financial statement, has released a false or misleading financial
36 statement to a lending institution or to the general public, or has made a false
37 or misleading entry or omitted an entry of material amount in the insurer's
38 books;
- 39 (14) Whether the insurer has grown so rapidly and to such an extent that it lacks
40 adequate financial and administrative capacity to meet its obligations in a
41 timely manner;~~or~~
- 42 (15) Whether the insurer has experienced or will experience in the foreseeable
43 future cash flow or liquidity ~~problems.~~ problems;
- 44 (16) Whether management has established reserves that do not comply with
45 minimum standards established by State insurance laws, regulations,
46 statutory accounting standards, sound actuarial principles, and standards of
47 practice;
- 48 (17) Whether management persistently engages in material under reserving that
49 results in adverse development;
- 50 (18) Whether transactions among affiliates, subsidiaries, or controlling persons
51 for which the insurer receives assets or capital gains, or both, do not provide

sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or

(19) Any other finding determined by the Commissioner to be hazardous to the insurer's policyholders, creditors, or general public.

To determine an insurer's financial condition under this Article, the Commissioner may: disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding; make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates of an insurer; refuse to recognize the stated value of accounts receivable if the insurer's ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

If upon examination or at any other time the Commissioner has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the domestic insurer gives its consent, then the Commissioner shall upon the Commissioner's determination:

- (1) ~~Notify~~ Issue an order notifying the insurer of that determination; and
- (2) Furnish to the insurer a written list of the Commissioner's requirements to abate that determination. ~~determination that may include any of the following:~~

~~The written list may include requirements that the insurer: reduce~~

- a. A reduction in the total amount of present and potential liability for policy benefits by reinsurance; ~~reinsurance.~~
- b. ~~reduce, suspend, or limit~~ A reduction, suspension, or limitation of the volume of insurance being accepted or renewed; ~~renewed.~~
- c. ~~reduce~~ A reduction in general insurance and commission expenses by specified methods; ~~methods.~~
- d. An increase in the insurer's capital and surplus; ~~surplus.~~
- e. ~~suspend or limit its~~ A suspension or limitation in the insurer's declaration and payment of dividends to its stockholders or policyholders; ~~policyholders.~~
- f. ~~file reports~~ The filing of reports in a form acceptable to the Commissioner concerning the market value of its assets; ~~assets.~~
- g. ~~limit or withdraw~~ A limitation or withdrawal from certain investments or discontinue the discontinuance of certain investment practices to the extent the Commissioner considers to be necessary; ~~necessary.~~
- h. ~~document~~ Documentation of the adequacy of premium rates in relation to the risks insured; ~~insured.~~
- i. ~~or file~~ The filing, in addition to regular annual financial statements, of interim financial reports on the form adopted by the NAIC or on such format prescribed by the Commissioner. ~~Commissioner.~~
- j. The correction of corporate governance practice deficiencies.
- k. The adoption and utilization of governance practices acceptable to the Commissioner.
- l. The provision of a business plan to the Commissioner in order to continue to transact business in the State.

1 Notwithstanding any other provision of law limiting the frequency or amount of premium
2 rate adjustments, the Commissioner may adjust rates for any non-life insurance product include
3 ~~in the list of requirements any rate adjustments for any kinds of insurance~~ written by the insurer
4 that the Commissioner considers necessary to improve the financial condition of the insurer."

5 **SECTION 7.** G.S. 58-31-45 reads as rewritten:

6 **"§ 58-31-45. Report required of Commissioner.**

7 The Commissioner must submit to the Governor a full report of his official action under
8 this Article, with such recommendations as commend themselves to him, ~~and it shall be~~
9 ~~embodied in or attached to his biennial report to the General Assembly~~ the Commissioner."

10 **SECTION 8.** G.S. 58-36-42 reads as rewritten:

11 **"§ 58-36-42. Development of policy form or endorsement for residential property**
12 **insurance that does not include coverage for perils of windstorm or hail.**

13 With respect to residential property insurance under its jurisdiction, the Bureau shall
14 develop an optional policy form or endorsement to be filed with the Commissioner for approval
15 that provides residential property insurance coverage in the coastal and beach areas defined in
16 G.S. 58-45-5(2) and (2b) without coverage for the perils of windstorm or hail. Insurers that sell
17 such policies shall comply with the provisions of G.S. 58-44-60 and through such compliance
18 shall be deemed to have given notice to all insured and persons claiming benefits under such
19 policies that such policies do not include coverage for the perils of windstorm or hail."

20 **SECTION 9.** G.S. 58-50-131(a) reads as rewritten:

21 **"§ 58-50-131. Premium rates for health benefit plans; approval authority; hearing.**

22 (a) No schedule of premium rates for coverage for a health benefit plan subject to this
23 act, or any amendment to the schedule, shall be used in conjunction with any such health
24 benefit plan until a copy of the schedule of premium rates or premium rate amendment has
25 been filed with and approved by the Commissioner. Any schedule of premium rates or
26 premium rate amendment filed under this section shall be established in accordance with
27 G.S. 58-50-130(b). The schedule of premium rates shall not be excessive, unjustified,
28 inadequate, or unfairly discriminatory and shall exhibit a reasonable relationship to the benefits
29 provided by the contract of insurance. Each filing shall include a certification by ~~an individual~~
30 ~~who is a member in good standing with the Society of Actuaries~~ an actuary who is a member of
31 the American Academy of Actuaries and qualified to provide such certifications as described in
32 the U.S. Qualifications Standards promulgated by the American Academy of Actuaries
33 pursuant to its Code of Professional Conduct."

34 **SECTION 10.** G.S. 58-50-82 reads as rewritten:

35 **"§ 58-50-82. Expedited external review.**

36 ...

37 (b) Within ~~three business two~~ days ~~of after~~ receiving a request for an expedited external
38 review, the Commissioner shall complete all of the following:

39 ...

40 (c) As soon as possible, but within the same ~~business day of after~~ receiving notice
41 under subdivision (b)(2) of this section that the request has been assigned to a review
42 organization, the insurer or its designee utilization review organization shall provide or transmit
43 all documents and information considered in making the noncertification appeal decision or the
44 second-level grievance review decision to the assigned review organization electronically or by
45 telephone or facsimile or any other available expeditious method. A copy of the same
46 information shall be sent by the same means or other expeditious means to the covered person
47 or the covered person's representative who made the request for expedited external review.

48 ...

49 (e) As expeditiously as the covered person's medical condition or circumstances
50 require, but not more than ~~four business three~~ days after the date of receipt of the request for an
51 expedited external review, the assigned organization shall make a decision to uphold or reverse

the noncertification, noncertification appeal decision, or second-level grievance review decision and notify the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner of the decision. In reaching a decision, the assigned organization is not bound by any decisions or conclusions reached during the insurer's utilization review process or internal grievance process under G.S. 58-50-61 and G.S. 58-50-62.

...."

SECTION 11. G.S. 143-730 reads as rewritten:

"§ 143-730. ~~Managed Care Patient Assistance Program.~~Health Insurance Smart NC.

(a) The Office of Managed Care Patient Assistance Program is ~~established in the Department of Insurance.~~ shall hereafter be known as the Health Insurance Smart NC.

(b) ~~The Managed Care Patient Assistance Program~~Health Insurance Smart NC shall provide information and assistance to individuals enrolled in managed health care plans. ~~The Managed Care Patient Assistance Program shall have expertise and experience in both health care and advocacy and will assume the specific duties and responsibilities set forth in subsection (c) of this section.~~

(c) ~~The duties and responsibilities of the Managed Care Patient Assistance Program are as follows:~~Health Insurance Smart NC shall have the responsibility and duty to:

- (1) Develop and distribute educational and informational materials for consumers, explaining their rights and responsibilities as managed health care plan enrollees.
- (2) Answer inquiries posed by ~~consumers and refer inquiries of a regulatory nature to staff within the Department of Insurance.~~consumers.
- (3) Advise managed health care plan enrollees about the utilization review process.
- (4) Assist enrollees with the grievance, appeal, and external review procedures established by Article 50 of Chapter 58 of the General Statutes.
- (5) Publicize the ~~Office of the Managed Care Patient Assistance Program.~~Health Insurance Smart NC.
- (6) Compile data on the activities of the Office and evaluate such data to make recommendations as to the needed activities of the Office.

(d) ~~The Director of the Managed Care Patient Assistance Program shall annually report the activities of the Managed Care Patient Assistance Program, including the types of appeals, grievances, and complaints received and the outcome of these cases. The report shall be submitted to the General Assembly, upon its convening or reconvening, and shall make recommendations as to efforts that could be implemented to assist managed care consumers.~~

(e) All health information in the possession of the ~~Managed Care Patient Assistance Program~~Health Insurance Smart NC is confidential and is not a public record pursuant to G.S. 132-1 or any other applicable statute.

For purposes of this section, "health information" means any of the following:

- (1) Information relating to the past, present, or future physical or mental health or condition of an individual.
- (2) Information relating to the provision of health care to an individual.
- (3) Information relating to the past, present, or future payment for the provision of health care to an individual.
- (4) Information, in any form, that identifies or may be used to identify an individual, that is created by, provided by, or received from any of the following:
 - a. An individual or an individual's spouse, parent, legal guardian, or designated representative.

- b. A health care provider, health plan, employer, health care clearinghouse, or an entity doing business with these entities."

SECTION 12. G.S. 58-6-25(d)(4) reads as rewritten:

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

...

- (4) Money appropriated for the office of ~~Managed Care Patient Assistance Program~~Health Insurance Smart NC established under G.S. 143-730 to pay the actual costs of administering the program."

SECTION 13. G.S. 58-50-61(h) reads as rewritten:

"§ 58-50-61. Utilization review.

...

(h) Notice of Noncertification. – A written notification of a noncertification shall include all reasons for the noncertification, including the clinical rationale, the instructions for initiating a voluntary appeal or reconsideration of the noncertification, and the instructions for requesting a written statement of the clinical review criteria used to make the noncertification. An insurer shall provide the clinical review criteria used to make the noncertification to any person who received the notification of the noncertification and who follows the procedures for a request. An insurer shall also inform the covered person in writing about the availability of assistance from ~~the Managed Care Patient Assistance Program~~Health Insurance Smart NC, including the telephone number and address of the Program."

SECTION 14. G.S. 58-50-61(k)(6) reads as rewritten:

"§ 58-50-61. Utilization review.

...

- (6) Notice of the availability of assistance from ~~the Managed Care Patient Assistance Program~~Health Insurance Smart NC, including the telephone number and address of the Program."

SECTION 15. G.S. 58-50-61(m) reads as rewritten:

"§ 58-50-61. Utilization review.

...

(m) Disclosure Requirements. – In the certificate of coverage and member handbook provided to covered persons, an insurer shall include a clear and comprehensive description of its utilization review procedures, including the procedures for appealing noncertifications and a statement of the rights and responsibilities of covered persons, including the voluntary nature of the appeal process, with respect to those procedures. An insurer shall also include in the certificate of coverage and the member handbook information about the availability of assistance from ~~the Managed Care Patient Assistance Program~~Health Insurance Smart NC, including the telephone number and address of the Program. An insurer shall include a summary of its utilization review procedures in materials intended for prospective covered persons. An insurer shall print on its membership cards a toll-free telephone number to call for utilization review purposes."

SECTION 16. G.S. 58-50-62 reads as rewritten:

"§ 58-50-62. Insurer grievance procedures.

...

(c) Grievance Procedures. – Every insurer shall have written procedures for receiving and resolving grievances from covered persons. A description of the grievance procedures shall be set forth in or attached to the certificate of coverage and member handbook provided to covered persons. The description shall include a statement informing the covered person that the grievance procedures are voluntary and shall also inform the covered person about the availability of the Commissioner's office for assistance, including the telephone number and address of the office. ~~The description shall also inform the covered person about the availability~~

1 of assistance from the ~~Managed Care Patient Assistance Program~~, including the telephone
2 number and address of the Program.

3 ...
4 (e) First-Level Grievance Review. – A covered person or a covered person's provider
5 acting on the covered person's behalf may submit a grievance.

6 ...
7 (2) An insurer shall issue a written decision, in clear terms, to the covered
8 person and, if applicable, to the covered person's provider, within 30 days
9 after receiving a grievance. The person or persons reviewing the grievance
10 shall not be the same person or persons who initially handled the matter that
11 is the subject of the grievance and, if the issue is a clinical one, at least one
12 of whom shall be a medical doctor with appropriate expertise to evaluate the
13 matter. Except as provided in subdivision (3) of this subsection, if the
14 decision is not in favor of the covered person, the written decision issued in
15 a first-level grievance review shall contain:

16 ...
17 f. Notice of the availability of assistance from the ~~Managed Care~~
18 ~~Patient Assistance Program~~, Health Insurance Smart NC, including
19 the telephone number and address of the Program.

20 ...
21 (f) Second-Level Grievance Review. – An insurer shall establish a second-level
22 grievance review process for covered persons who are dissatisfied with the first-level grievance
23 review decision or a utilization review appeal decision. A covered person or the covered
24 person's provider acting on the covered person's behalf may submit a second-level grievance.

25 (1) An insurer shall, within 10 business days after receiving a request for a
26 second-level grievance review, make known to the covered person:

27 ...
28 c. The availability of assistance from the ~~Managed Care Patient~~
29 ~~Assistance Program~~, Health Insurance Smart NC, including the
30 telephone number and address of the Program.

31"

32 **SECTION 17. G.S. 58-50-62(h)(9) reads as rewritten:**

33 **"§ 58-50-62. Insurer grievance procedures.**

34 ...
35 (9) Notice of the availability of assistance from the ~~Managed Care Patient~~
36 ~~Assistance Program~~, Health Insurance Smart NC, including the telephone
37 number and address of the Program."

38 **SECTION 18. G.S. 58-50-80(b)(3) reads as rewritten:**

39 **"§ 58-50-80. Standard external review.**

40 ...
41 (3) Notify in writing the covered person and the covered person's provider who
42 performed or requested the service whether the request is complete and
43 whether the request has been accepted for external review. If the request is
44 complete and accepted for external review, the notice shall include a copy of
45 the information that the insurer provided to the Commissioner pursuant to
46 subdivision (b)(1) of this section, and inform the covered person that the
47 covered person may submit to the assigned independent review organization
48 in writing, within seven days after the receipt of the notice, additional
49 information and supporting documentation relevant to the initial denial for
50 the organization to consider when conducting the external review. If the
51 covered person chooses to send additional information to the assigned

independent review organization, then the covered person shall at the same time and by the same means, send a copy of that information to the insurer. The Commissioner shall also notify the covered person in writing of the availability of assistance from the ~~Managed Care Patient Assistance Program, Health Insurance Smart NC,~~ including the telephone number and address of the ~~Program, Health Insurance Smart NC.~~"

SECTION 19. G.S. 58-51-75 reads as rewritten:

"§ 58-51-75. Blanket accident and health insurance defined.

(a) Any policy or contract of insurance against death or injury resulting from accident or from accidental means which insures a group of persons conforming to the requirements of one of the following subdivisions (1) to (7), inclusive, shall be deemed a blanket accident policy. Any policy or contract which insures a group of persons conforming to the requirements of one of the following subdivisions (3), (5), (6) or (7) against total or partial disability, excluding such disability from accident or from accidental means, shall be deemed a blanket health insurance policy. Any policy or contract of insurance which combines the coverage of blanket accident insurance and of blanket health insurance on such a group of persons shall be deemed a blanket accident and health insurance policy:

~~(1) Under a policy or contract issued to any railroad, steamship, motorbus or airplane carrier of passengers, which shall be deemed the policyholder, a group defined as all persons who may become such passengers may be insured against death or bodily injury either while, or as a result of, being such passengers.~~

(1) Under a policy or contract issued to any common carrier or to any operator, owner, or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group defined as all persons or all persons of a class who may become passengers on the common carrier or the means of transportation.

(2) Under a policy or contract issued to an employer, or the trustee of a fund established by the employer; who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employee against death or bodily injury resulting while, or from, being exposed to such exceptional hazard.

(3) Under a policy or contract issued to a college, school or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.

(4) Under a policy or contract issued in the name of any volunteer fire department, emergency medical service, rescue first aid, civil defense, or any other such volunteer organization, which shall be deemed the policyholder, covering all of the any group of members or other participants defined by reference to specified hazards incident to any activities or operations sponsored or supervised by such policyholder, of such department.

(5) Under a policy or contract issued to and in the name of an incorporated or unincorporated association of persons having a common interest or calling, which association shall be deemed the policyholder, having not less than 25 members, and formed for purposes other than obtaining insurance, covering all of the members of such association.

(6) Under a policy or contract issued to the head of a ~~family, household,~~ who shall be deemed the policyholder, whereunder the benefits thereof shall provide for the payment by the insurer of amounts for expenses incurred by the policyholder on account of hospitalization or medical or surgical aid for

- 1 ~~himself~~, the policyholder, his or her spouse, his or her child or children, or
2 other persons chiefly dependent on him or her for support and maintenance.
- 3 (7) Under a policy or contract issued to or in the name of any municipal or
4 county recreation commission or ~~department~~ department, sports team,
5 league, tournament, or sponsor thereof, which shall be deemed the
6 ~~policyholder~~ policyholder, covering participants, members, coaches,
7 counselors, employees, officials, or supervisors defined by reference to
8 specified hazards incident to activities or operations sponsored or supervised
9 by such policyholder or on the premises of such policyholder.
- 10 (8) Under a policy or contract issued to any incorporated or unincorporated
11 religious, charitable, recreational, educational, athletic, or civic organization
12 or branch thereof, which shall be deemed the policyholder, covering any
13 group of members, participants, or volunteers defined by reference to
14 specified hazards incident to activities or operations sponsored or supervised
15 by such policyholder or on the premises of such policyholder.
- 16 (9) Under a policy or contract issued to any overnight, day, religious, equestrian,
17 adventure, wilderness, athletic, or other camp, or the sponsor thereof, which
18 shall be deemed the policyholder, covering any group of campers,
19 participants, counselors, employees, volunteers, or supervisors defined by
20 reference to specified hazards incident to activities or operations sponsored
21 or supervised by such policyholder or on the premises of such policyholder.
- 22 (10) Under a policy or contract issued to any bank, credit union, or other financial
23 institution, which shall be deemed the policyholder, to insure any group of
24 account holders or members of the policyholder and as defined by reference
25 in the policy or contract, in which premiums for such insurance are paid by
26 the policyholder, as authorized by the account holder or member from
27 account holder or member funds on deposit with the policyholder, collected
28 from the account holders or members by way of account billing or member
29 billing, or by the policyholder and account holders jointly.
- 30 (11) Any other risk or class of risks which, in the discretion of the Commissioner,
31 may be properly eligible for blanket accident, health, or accident and health
32 insurance. The discretion of the Commissioner may be exercised on an
33 individual risk basis or class of risks, or both after the Commissioner has
34 made the following findings:
- 35 a. The issuance of the blanket policy is not contrary to the best interest
36 of the public.
- 37 b. The issuance of the blanket policy would result in economies of
38 acquisition or administration.
- 39 c. The benefits are reasonable in relation to the premiums charged.
- 40 (b) All benefits under any blanket accident, blanket health or blanket accident and
41 health insurance policy shall be payable to the person insured, or to his designated beneficiary
42 or beneficiaries, or to his estate, or to a person or persons chiefly dependent upon the person
43 insured for support and maintenance, except that if the person insured be a minor, such benefits
44 may be made payable to his parent, guardian, or other person actually supporting him, or to a
45 person or persons chiefly dependent upon him for support and maintenance. the minor.
46"

47 SECTION 20. G.S. 58-40-10(1)b. reads as rewritten:

48 "§ 58-40-10. Other definitions.

49 As used in this Article and in Articles 36 and 37 of this Chapter:

- 50 (1) "Private passenger motor vehicle" means:

- 1 a. A motor vehicle of the private passenger or station wagon type that is
2 owned or hired under a long-term contract by the policy named
3 insured and that is neither used as a public or livery conveyance for
4 passengers nor rented to others without a driver; or
5 b. A motor vehicle that is a pickup truck or van that is owned by an
6 individual or by husband and wife or individuals who are residents of
7 the same household if it:
8 1. Has a gross vehicle weight as specified by the manufacturer
9 of less than ~~10,000~~14,000 pounds; and
10 2. Is not used for the delivery or transportation of goods or
11 materials unless such use is (i) incidental to the insured's
12 business of installing, maintaining, or repairing furnishings or
13 equipment, or (ii) for farming or ranching.
14 Such vehicles owned by a family farm copartnership or a family farm
15 corporation shall be considered owned by an individual for the
16 purposes of this section; or
17 c. A motorcycle, motorized scooter or other similar motorized vehicle
18 not used for commercial purposes.

19"

20 SECTION 21. G.S. 58-33A-65(f)(3) reads as rewritten:

21 "§ 58-33A-65. Contract between public adjuster and insured.

22 ...
23 (f) Before the signing of the contract, the public adjuster shall provide the insured with
24 a separate disclosure document regarding the claim process that states:

- 25 ...
26 (3) The insured has the right to initiate direct communications with the insured's
27 attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any
28 other person regarding the settlement of the insured's claim. ~~Once a public~~
29 ~~adjuster has been retained, the company adjuster or other insurance~~
30 ~~representative may not communicate directly with the insured without the~~
31 ~~permission or consent of the public adjuster or the insured's legal counsel.~~

32"

33 SECTION 22.(a) G.S. 58-2-46 reads as rewritten:

34 "§ 58-2-46. State of ~~emergency~~disaster automatic stay of proof of loss requirements;
35 premium and debt deferrals; loss adjustments for separate windstorm policies.

36 Whenever (i) a state of ~~emergency~~disaster is proclaimed for the State or for an area within
37 the State under ~~G.S. 166A-19.21~~ G.S. 166A-19.20 or whenever the President of the United
38 States has issued a major disaster declaration for the State or for an area within the State under
39 the Stafford Act, 42 U.S.C. § 5121, et seq., as ~~amended~~:amended and (ii) if the Commissioner
40 has issued an order declaring subdivisions (1) through (4) herein effective for the specific
41 disaster:

- 42 (1) The application of any provision in an insurance policy insuring real
43 property and its contents that are located within the geographic area
44 designated in the proclamation or declaration, which provision requires an
45 insured to file a proof of loss within a certain period of time after the
46 occurrence of the loss, shall be stayed for the time period not exceeding the
47 earlier of (i) the expiration of the disaster proclamation or declaration and all
48 renewals of the proclamation or 45 days, whichever is later proclamation or
49 (ii) the expiration of the Commissioner's order declaring subdivisions (1)
50 through (4) herein effective for the specific disaster, as determined by the
51 Commissioner.

- (2) As used in this subdivision, "insurance company" includes a service corporation, HMO, MEWA, surplus lines insurer, and the underwriting associations under Articles 45 and 46 of this Chapter. All insurance companies, premium finance companies, collection agencies, and other persons subject to this Chapter shall give their customers who reside within the geographic area designated in the proclamation or declaration the option of deferring premium or debt payments that are due during the earlier of (i) the time period covered by the proclamation or declaration, or (ii) the time period prior to the expiration of the Commissioner's order declaring subdivisions (1) through (4) herein effective for the specific disaster, as determined by the Commissioner. This deferral period shall be 30 days from the last day the premium or debt payment may be made under the terms of the policy or contract. This deferral period shall also apply to any statute, rule, or other policy or contract provision that imposes a time limit on an insurer, insured, claimant, or customer to perform any act during the time period covered by the proclamation or declaration, including the transmittal of information, with respect to insurance policies or contracts, premium finance agreements, or debt instruments when the insurer, insured, claimant, or customer resides or is located in the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to individuals who reside within the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to individuals who reside within the geographic area designated in the proclamation or declaration. The Commissioner may extend any deferral period in this subdivision, depending on the nature and severity of the proclaimed or declared disaster. No additional rate or contract filing shall be necessary to effect any deferral period.
- (3) With respect to health benefit plans, after a deferral period has expired, all premiums in arrears shall be payable to the insurer. If premiums in arrears are not paid, coverage shall lapse as of the date premiums were paid up, and preexisting conditions shall apply as permitted under this Chapter; and the insured shall be responsible for all medical expenses incurred since the effective date of the lapse in coverage.
- (4) In addition to the requirements of G.S. 58-45-35(e), for separate windstorm policies that are written by an insurer other than the Underwriting Association, losses shall be adjusted by the insurer that issued the property insurance and not by the insurer that issued the windstorm policy. The insurer that issued the windstorm policy shall reimburse the insurer that issued the property insurance for reasonable expenses incurred by that insurer in adjusting the windstorm losses."

SECTION 22.(b) G.S. 58-2-47 reads as rewritten:

"§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer provisions.

Regardless of whether a state of emergency or disaster has been proclaimed under G.S. 166A-19.20 or G.S. 166A-19.21 or declared under the Stafford Act, whenever an incident beyond the Department's reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the Department, the Commissioner may issue an order, effective immediately, to

1 stay the application of any deadlines and deemer provisions imposed by law or rule upon the
2 Commissioner or Department or upon persons subject to the Commissioner's jurisdiction,
3 which deadlines and deemer provisions would otherwise operate during the time period for
4 which the operations of the Department have been substantially affected. The order shall
5 remain in effect for a period not exceeding 30 days. The order may be renewed by the
6 Commissioner for successive periods not exceeding 30 days each for as long as the operations
7 of the Department remain substantially affected, up to a period of one year from the effective
8 date of the initial order."

9 **SECTION 22.(c)** G.S. 58-33-70(e) reads as rewritten:

10 **"§ 58-33-70. Special provisions for adjusters and motor vehicle damage appraisers.**

11 ...

12 (e) The Commissioner may permit an experienced adjuster, who regularly adjusts in
13 another state and who is licensed in the other state (if that state requires a license), to act as an
14 adjuster in this State without a North Carolina license only for an insurance company
15 authorized to do business in this State, for emergency insurance adjustment work, for a period
16 to be determined by the Commissioner, done for an employer who is an adjuster licensed by
17 this State or who is a regular employer of one or more adjusters licensed by this State; provided
18 that the employer shall furnish to the Commissioner a notice in writing immediately upon the
19 beginning of any such emergency insurance adjustment work. As used in this subsection,
20 "emergency insurance adjustment work" includes, but is not limited to, (i) adjusting of a single
21 loss or losses arising out of an event or catastrophe common to all of those losses or (ii)
22 adjusting losses in any area declared to be a state of emergency or disaster by the Governor
23 under G.S. 166A-19.20 or G.S. 166A-19.21 or by the President of the United States under
24 applicable federal law."

25 **SECTION 22.(d)** G.S. 58-44-70(a) reads as rewritten:

26 "Part 2. Mediation of Emergency or Disaster-Related Property Insurance Claims.

27 **"§ 58-44-70. Purpose and scope.**

28 (a) This Part provides for a nonadversarial alternative dispute resolution procedure for a
29 facilitated claim resolution conference prompted by the critical need for effective, fair, and
30 timely handling of insurance claims arising out of damages to residential property as the result
31 of an event for which there is a state of ~~emergency~~disaster declared within 60 days of the event.
32 This Part applies only (i) if a state of ~~emergency~~disaster has been proclaimed for the State or
33 for an area within the State by the Governor or by a resolution of the General Assembly under
34 ~~G.S. 166A-19.20; G.S. 166A-19.21~~ or (ii) if the President of the United States has issued a
35 major disaster declaration for the State or for an area within the State under the Robert T.
36 Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended;
37 and (iii) if the Commissioner issues an order establishing the mediation procedure authorized
38 by this Part."

39 **SECTION 22.(e)** G.S. 58-44-75(2) reads as rewritten:

40 **"§ 58-44-75. Definitions.**

41 As used in this Part:

42 ...

43 (2) ~~Disaster. As the term "emergency" is defined in G.S. 166A-19.3(6)."~~

44 **SECTION 23.** G.S. 58-44-35 reads as rewritten:

45 **"§ 58-44-35. Judge to select umpire.**

46 ~~The~~Any resident judge of the superior court of the district in which the property insured is
47 located is designated as the judge of the court of record to select the umpire referred to in the
48 standard form of ~~policy~~policy as set forth in G.S. 58-44-16(f)(14). The judge may not select
49 the umpire until all of the following conditions have been met:

50 (1) Proof of notice to all parties of record has been filed with the court, and at
51 least 15 days have passed since the filing of the proof of notice.

1 (2) Upon the request of any party of record, the judge has conducted a hearing.
2 The hearing by the judge shall be governed by the practice for hearings in
3 other civil actions before a judge without a jury, and shall be limited to the
4 issue of umpire selection."

5 **SECTION 24.** Article 3 of Chapter 58 of the General Statutes is amended by
6 adding a new section to read as follows:

7 **"§ 58-3-300. Health insurance issuers subject to certain requirements of federal law.**

8 Pursuant to the authority granted to the states under 42 U.S.C. § 300gg-22(a)(1),
9 health insurance issuers that issue, sell, renew, or offer health benefit plans, as defined in
10 G.S. 58-3-167(a)(1), in the State in the individual or group market shall meet the requirements
11 of Part A of Subchapter XXV of Chapter 6A of Title 42 of the United States Code and
12 regulations issued thereunder."

13 **SECTION 25.** Section 10 of this act becomes effective January 1, 2016. Section 20
14 of this act becomes effective January 1, 2015, and applies to policies whose effective date is on
15 or after that date. Sections 22 and 24 of this act are effective when they become law. Section 23
16 of this act becomes effective October 1, 2013. The remainder of this act becomes effective July
17 1, 2013.



HOUSE BILL 240: Insurance Technical/Clarifying Changes.-AB

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Rep. Dockham
Analysis of: PCS to Third Edition
H240-CSTP-48

Date: June 5, 2013
Prepared by: Peter Ledford
Committee Counsel

SUMMARY: *House Bill 240 makes various statutory changes recommended by the Department of Insurance.*

The PCS adds Section 24.

BILL ANALYSIS:

Section 1 removes the requirement that an accident and health insurer limit its exposure to loss from any one risk to 10% of the company's surplus to policyholders.

Section 2 removes the requirement that each key person at a new domestic insurance company furnish the Commissioner of Insurance (Commissioner) with a photograph for the purpose of a criminal history record check conducted by the State Bureau of Investigation (SBI), as the SBI no longer requires the photograph for its check.

Section 3 removes the sunset of a provision to allow mortgage guaranty companies to adjust their capital and surplus requirements. In 2009, the General Assembly passed S.L. 2009-254 to allow mortgage guarantee companies to put more money at risk if the company meets certain criteria and receives approval from the Department of Insurance (Department). The original law included a sunset of July 1, 2015.

Section 4 clarifies the requirements of risk-based capital plans that insurers and health organizations are required to submit to the Commissioner when a company action level event occurs to ensure that the State complies with National Association of Insurance Commissioners (NAIC) requirements to keep the State's accreditation.

Section 5 amends confidentiality provisions to comply with NAIC requirements.

Section 6 adopts a NAIC model regulation to expand the standards available to the Commissioner when determining if an insurer is in a financially hazardous condition, and increases the variety of steps the insurer may be required to take to mitigate the financially hazardous condition.

Section 7 makes a technical change to remove language referencing a reporting requirement that was repealed in 1999.

Section 8 clarifies that residential property insurance coverage without coverage for wind or hail will only be available in coastal counties where residents can obtain wind and hail coverage from the Coastal Property Insurance Pool.

Section 9 clarifies that actuaries who certify a schedule of premium rates or premium rate amendments must be properly accredited to provide the certification.

Section 10 shortens the time for the handling of expedited external review of an appeal decision upholding a noncertification or a second-level grievance review decision upholding a noncertification of a health benefit plan by the Department.

O. Walker Reagan
Director



Research Division
(919) 733-2578

House PCS 240

Page 2

Sections 11-18 remove references to the Managed Care Patient Assistant Program and replace them with references to the Health Insurance Smart NC Program. The Managed Care Patient Assistant Program was moved to the Department by S.L. 2012-142 and the program is now located in the Health Insurance Smart NC Program.

Section 19 makes changes to the types of organizations that can purchase blanket accident and health insurance in the State. Blanket accident and health insurance provides coverage for eligible individuals in the specified organizations when they are engaged in specified activities covered by the policy. The organizations authorized to purchase blanket accident and health insurance have not been updated since 1961. This section expands the organizations available to purchase the insurance to include all common carriers, including taxicab companies, first responder organizations, a wider range of sports teams, leagues, or sponsors, religious, charitable, educational, athletic, and civic organizations, and overnight and day camps. The changes also give the Commissioner the discretion to approve other risks or classes of risks not enumerated in the statute under certain circumstances.

Section 20 changes the weight restriction for private passenger motor vehicles from 10,000 pounds to 14,000 pounds to allow large pickups to be insured on private motor vehicle policies rather than on commercial policies.

Section 21 removes the restriction that, once the insured has privately retained a public adjuster, a company adjuster or other representative may not communicate directly with the insured without the consent of the public adjuster or the attorney of the insured. This change will allow the insurance company to continue to communicate with the insured after a public adjuster has been hired.

Section 22 changes the triggering event for certain requirements for insurance companies during a natural disaster from the declaration of a state of emergency to the declaration of a state of disaster, and gives the Commissioner the discretion to decide whether a natural disaster is sufficiently widespread and recently occurring to justify invoking the requirements. These requirements include things such as extending the time to file a proof of loss and deferring premium or debt payments that are due. The triggering event was inadvertently changed to a declaration of a state of emergency by S.L. 2012-12, which modernized the North Carolina Emergency Management Act.

Section 23 would amend the process by which an umpire is selected by a judge in a property insurance dispute. When the insured and the insurer fail to agree on the value or amount of loss, either may demand that each party select an appraiser, and the appraisers shall together select a competent and disinterested umpire. If the appraisers cannot select an umpire, a judge shall select an umpire. The appraisers submit the areas in which they disagree to the umpire, who determines the actual value or amount of loss.

Section 24 requires all health insurance issuers that issue, sell, renew or offer health benefit plans in the State in the individual and group markets to meet the requirements found in Part A of Subchapter XXV of the Public Health Service Act. In doing so, the bill gives the Commissioner authority over enforcement of those provisions that the Commissioner would likely not otherwise have.

EFFECTIVE DATE: Section 10 of this act becomes effective January 1, 2016. Section 20 of this act becomes effective January 1, 2015, and applies to policies whose effective date is on or after that date. Sections 22 and 24 of this act are effective when they become law. Section 23 of this act becomes effective October 1, 2013. The remainder of this act becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

2

HOUSE BILL 340
Committee Substitute Favorable 4/11/13

Short Title: Limited Lines Travel Insurance.

(Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED
AN ACT TO ALLOW THE DEPARTMENT OF INSURANCE TO LICENSE NATIONAL
TRAVEL INSURANCE PRODUCERS TO SELL TRAVEL INSURANCE THROUGH
THIRD-PARTY TRAVEL RETAILERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 33 of Chapter 58 of the General Statutes is amended by
adding a new section to read:

"§ 58-33-19. Limited lines travel insurance.

(a) As used in this Article, the following definitions apply:

(1) Limited lines travel insurance producer. – Any of the following:

a. A licensed managing general underwriter.

b. A licensed managing general agent or third-party administrator.

c. A licensed insurance producer, including a limited lines producer
designated by an insurer as the travel insurance supervising entity, as
set forth in subsection (h) of this section.

(2) Offer and disseminate. – Providing general information, including a
description of the coverage and price, as well as processing the application,
collecting premiums, and performing other activities that do not require a
license and are permitted by the Department.

(3) Travel insurance. – Insurance coverage for the personal risks incident to
planned travel that includes, but is not limited to, the coverages listed in
sub--subdivisions a. through d. of this subdivision. Travel insurance does not
include major medical plans that provide comprehensive medical protection
for travelers with trips lasting six months or longer, including deployed
military personnel or those U.S. citizens working overseas as expatriates.

a. Interruption or cancellation of trip or event.

b. Loss of baggage or personal effects.

c. Damages to accommodations or rental vehicles.

d. Sickness, accident, disability, or death occurring during travel.

(4) Travel retailer. – A business entity that makes, arranges, or offers travel
services and may offer and disseminate travel insurance as a service to its
customers on behalf of and under the direction of a limited lines travel
insurance producer.

(b) An individual or business entity may apply for a limited lines travel insurance
producer license by filing with the Department an application in a form and manner prescribed



by the Commissioner. If issued, the license authorizes the limited lines travel insurance producer to sell, solicit, or negotiate travel insurance through a licensed insurer.

(c) A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license only if the following conditions are met:

(1) The limited lines producer or travel retailer provides all of the following to purchasers of travel insurance:

a. A description of the material terms or the actual material terms of the insurance coverage.

b. A description of the process for filing a claim.

c. A description of the review or cancellation process for the travel insurance policy.

d. The identity and contact information of the insurer and limited lines travel insurance producer.

(2) At the time of licensure, the limited lines travel insurance producer shall establish and maintain a register on a form prescribed by the Commissioner of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf. The register shall be maintained and updated annually by the limited lines travel insurance producer and shall include the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations, and the travel retailer's federal Tax Identification Number. The limited lines travel insurance producer shall submit the register to the Department upon request. The limited lines producer shall also certify that the travel retailer register complies with 18 U.S.C. § 1033.

(3) The limited lines travel insurance producer has designated one of its employees who is a licensed individual producer as the person responsible for the limited lines travel insurance producer's compliance with this Chapter and administrative rules adopted by the Commissioner.

(4) The person designated in subdivision (3) of this subsection and the president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer.

(5) The limited lines travel insurance producer has paid all applicable insurance producer licensing fees as set forth in applicable State law.

(6) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the Commissioner. The training material shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(7) Limited lines travel insurance producers, and those registered under its license, are exempt from the examination and continuing education requirements under G.S. 58-33-30, 58-33-32, and 58-33-130.

(d) Any travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that include all of the following:

(1) The identity and contact information of the insurer and the limited lines travel insurance producer.

(2) An explanation that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer.

1 (3) A disclaimer that an unlicensed travel retailer is permitted to provide general
2 information about the insurance offered by the travel retailer, including a
3 description of the coverage and price, but is not qualified or authorized to
4 answer technical questions about the terms and conditions of the insurance
5 offered by the travel retailer or to evaluate the adequacy of the customer's
6 existing insurance coverage.

7 (e) A travel retailer's employee or authorized representative who is not licensed as a
8 limited lines travel insurance producer shall not do any of the following:

9 (1) Evaluate or interpret the technical terms, benefits, and conditions of the
10 offered travel insurance coverage.

11 (2) Evaluate or provide advice concerning a prospective purchaser's existing
12 insurance coverage.

13 (3) Hold himself or herself out as a licensed insurer, licensed producer, or
14 insurance expert.

15 (f) A travel retailer, whose insurance-related activities and the activities of its
16 employees and authorized representatives are limited to offering or disseminating travel
17 insurance on behalf of and under the direction of a limited lines travel insurance producer
18 meeting the conditions stated in this section, is authorized to do so and receive related
19 compensation, upon compliance with subdivision (c)(2) of this section by the limited lines
20 travel insurance producer.

21 (g) Travel insurance may be provided under an individual policy or under a group or
22 master policy.

23 (h) As the travel insurance supervising entity, the limited lines travel insurance
24 producer is responsible for the acts of the travel retailer and shall use reasonable means to
25 ensure compliance by the travel retailer with this section.

26 (i) The limited lines travel insurance producer and any travel retailer offering or
27 disseminating travel insurance under the limited lines travel insurance producer license shall be
28 subject to the provisions of Article 63 of this Chapter and to the full enforcement powers of the
29 Commissioner granted by Article 2 of this Chapter."

30 **SECTION 2.** This act becomes effective January 1, 2014.



HOUSE BILL 340: Limited Lines Travel Insurance

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Rep. Dockham
Analysis of: Second Edition

Date: June 4, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *House Bill 340 would authorize the Department of Insurance to regulate travel insurance producers. The bill would allow a licensed travel insurance producer to offer travel insurance through travel retailers, such as travel agents. The newly-regulated producers would pay a registration fee to the Department of Insurance.*

CURRENT LAW: Travel insurance is currently not regulated by the Department of Insurance.

BILL ANALYSIS: House Bill 340 would add a new section, G.S. 58-33-19, outlined below.

New G.S. 58-33-19(a) defines travel insurance as insurance coverage for personal risks incident to planned travel including interruption or cancellation of trip or event; loss of baggage or personal effects; damages to accommodations or rental vehicles; and sickness, accident, disability, or death occurring during travel. Travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting 6 months or longer.

New G.S. 58-33-19(b) provides for the licensing of travel insurance producers and the sale of travel insurance by a producer through a licensed insurer. The producers would pay an application fee to the Department of Insurance.

New G.S. 58-33-19(c) requires certain information to be disclosed to purchasers including a description of material terms, the process for filing a claim, cancellation procedures, and contact information. Producers must also maintain a registry of each travel retailer; designate an employee as the person responsible for compliance with this section; pay all producer licensing fees; and require a travel retailer's representatives to receive instruction on the types of insurance offered, ethical sales practices, and required disclosures.

New G.S. 58-33-19(d) requires travel retailers to provide prospective customers written materials that include the insurer's and producer's contact information, an explanation that travel insurance is not required, and a disclaimer that the retailer is not qualified to answer technical questions.

New G.S. 58-33-19(e) prohibits a travel retailer's representative from evaluating or interpreting technical terms, benefits, and conditions of coverage, or from providing advice concerning a prospective purchaser's existing coverage. The representatives may not hold themselves out as a licensed insurer, licensed producer or insurance expert.

New G.S. 58-33-19(f) authorizes the producer to pay the travel retailer compensation.

New G.S. 58-33-19(g) states that travel insurance may be provided under an individual or group policy.

New G.S. 58-33-19(h) holds the producer responsible for the acts of the travel retailer.

New G.S. 58-33-19(i) holds producers and retailers subject to the provisions in Chapter 58 on unfair trade practices and subjects producers and retailers to the Department of Insurance's enforcement powers, including license revocation and possible civil or criminal penalties.

EFFECTIVE DATE: House Bill 340 would become effective January 1, 2014.

O. Walker Reagan
Director



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House Bill 340

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Tim Hovis, counsel to House Insurance, substantially contributed to this summary.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 340

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H340-ARG-9 [v.1]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____, 2013

Senator _____

1 moves to amend the bill on page 1, lines 13-15,
2 by rewriting the lines to read:

3 "c. A licensed insurance producer as defined by G.S. 58-33-10(7),
4 including:

- 5 1. A limited lines producer designated by an insurer as the travel
6 insurance supervising entity, as set forth in subsection (h) of
7 this section.
8 2. A limited lines producer appointed by an insurer, as set forth
9 in G.S. 58-33-40, who acts as a landlord or real estate broker
10 engaged in the rental or management of residential property
11 for vacation rental as defined in Chapter 42A of the General
12 Statutes."
13

SIGNED

Norman Sanderson
Amendment Sponsor

SIGNED

[Signature]
Committee Chair of Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____



* H 3 4 0 - A R G - 9 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

5

HOUSE BILL 473*
Committee Substitute Favorable 4/24/13
Committee Substitute #2 Favorable 5/1/13
Committee Substitute #3 Favorable 5/9/13
Fifth Edition Engrossed 5/15/13

Short Title: NC Captive Insurance Act.

(Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED
AN ACT TO ENACT THE NORTH CAROLINA CAPTIVE INSURANCE ACT.
The General Assembly of North Carolina enacts:

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

"Part 9. Captive Insurance Companies.

"Subpart 1. General Provisions.

"§ 58-10-335. Purpose.

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

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

"§ 58-10-340. Definitions:

The following definitions apply in this Part:

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

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

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

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

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

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



* H 4 7 3 - V - 5 *

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

provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer.

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

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

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

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

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

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

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

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

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

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

(1) The applicant business entity shall submit its organizational documents to the Commissioner. If the Commissioner approves the organizational documents, then the Commissioner shall issue a letter to the applicant certifying the Commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the approval letter issued by the Commissioner, and the required filing fees for organizational documents prescribed by North Carolina law to the Secretary of State for filing. Upon filing the organizational documents, the Secretary of State shall issue a certificate of filing to the applicant. The applicant business entity shall submit a copy of the certificate of filing relative to the applicant's organizational documents issued by the Secretary of State to the Commissioner.

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

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

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

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

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

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

c. The overall soundness of its plan of operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-10-365. Names of companies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Incorporated as a mutual corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 "§ 58-10-385. Directors.

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

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

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

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

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

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

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

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

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

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

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

31 **"§ 58-10-405. Annual reports.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- as contained in the Code of Professional Ethics, pronouncements of the American Institute of Certified Public Accountants, and pronouncements of the Financial Accounting Standards Board.
- b. The general background and experience of the staff engaged in the audit, including the experience in auditing captives or other insurance companies.
- c. That the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this section with the Commissioner.
- d. That the accountant consents to the requirements of G.S. 58-10-422(b) and (c) and that the accountant consents and agrees to make available for review by the Commissioner, the Commissioner's appointed agent, or other designee the work papers as defined in G.S. 58-10-422(c).
- e. That the accountant is properly licensed by an appropriate state licensing authority and that he or she is a member in good standing of the American Institute of Certified Public Accountants.
- (4) Financial statements. – Statements required shall be as follows:
- a. Balance sheets reporting assets, liabilities, capital, and surplus.
- b. Statements of operations.
- c. Statements of cash flow.
- d. Statements of changes in capital and surplus.
- e. Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the captive insurance company and approved by the Commissioner, and shall include:
1. A reconciliation of differences, if any, between the audited financial report and the report of its financial condition filed with the Commissioner in accordance with G.S. 58-10-405(b).
2. A summary of ownership and relationship of the captive insurance company and all affiliated corporations or companies insured by the captive insurance company.
3. A narrative explanation of all material transactions and balances with the captive insurance company.
- (5) Certification of loss reserves and loss expense reserves. – The annual audit shall be filed with a Statement of Actuarial Opinion evaluating the captive insurance company's loss reserves and loss expense reserves. The individual who prepares the Statement of Actuarial Opinion shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated competence in loss reserve evaluation to the Commissioner. Certification shall be in such form as the Commissioner deems appropriate.

"§58-10-422. Independent certified public accountants.

(a) A captive insurance company, after becoming subject to this Part, shall within 60 days report to the Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in G.S. 58-10-420.

(b) A captive insurance company shall require its independent certified public accountant to immediately notify in writing an officer and all members of the board of directors of the captive insurance company of any determination by the independent certified public

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

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

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

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

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

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

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

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

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

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

46 **"§ 58-10-430. Examinations.**

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

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

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

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

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

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

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

"§ 58-10-440. Investment requirements.

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

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

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

10 (d) Notwithstanding this section or G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173,
11 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193,
12 58-7-197, 58-7-200, and 58-7-205, an association captive insurance company of an association
13 described in G.S. 58-10-340(4)(b) may hold any interest in qualified headquarters property, and
14 the qualified headquarters property shall be admitted assets and authorized investments of the
15 association captive insurance company. The net book value of the qualified headquarters
16 property deemed admitted and authorized under this subsection may not exceed two million
17 five hundred thousand dollars (\$2,500,000), and an association captive insurance company
18 holding qualified headquarters property pursuant to this subsection shall at all times maintain
19 total surplus, without regard to the qualified headquarters property, of at least the sum of (i)
20 fifty percent (50%) of the net book value of the qualified headquarters property and (ii) the
21 minimum capital and surplus requirements. For purposes of this subsection, "qualified
22 headquarters property" includes the real property and the building in which the principal office
23 of the association captive insurance company is located and also includes any improved and
24 unimproved real property of the association captive insurance company that is located within
25 1,500 feet of the company's principal office.

26 **"§ 58-10-445. Reinsurance.**

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

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

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

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

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

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

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

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

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

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

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

15 **"§ 58-10-455. Taxation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Subpart 2. Protected Cell Captive Insurance Companies.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Upon the Commissioner's written approval of the plan of operation, the protected cell captive insurance company may attribute insurance obligations with respect to its insurance business to the protected cell in accordance with the approved plan of operation.

(3) A protected cell shall have its own distinct name or designation that shall include the words "protected cell" or "incorporated cell."

(4) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(5) An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner. Each incorporated protected cell of a protected cell captive insurer shall be treated as a captive insurer for purposes of this Part. Unless otherwise permitted by the organizational documents of a protected cell captive insurer, each incorporated protected cell of the protected cell captive insurer must have the same directors, secretary, and registered office as the protected cell captive insurer.

(6) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation and participant contracts approved by the Commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell shall be in cash or in readily marketable securities with established market values.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Notwithstanding G.S. 58-10-510, the assets of two or more protected cells may be
5 combined for purposes of investment and such combination shall not be construed as defeating
6 the segregation of such assets for accounting or other purposes. Protected cell captive insurance
7 companies shall comply with the investment requirements contained in G.S. 58-7-167,
8 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187,
9 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable; provided that
10 compliance with such investment requirements shall be waived for protected cell captive
11 insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed
12 pursuant to G.S. 58-10-445 or to the extent otherwise deemed reasonable and appropriate by
13 the Commissioner. Notwithstanding any other provision of this Chapter, the Commissioner
14 may approve the use of alternative reliable methods of valuation and rating.

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

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

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

22 (c) Notwithstanding Article 30 of this Chapter:

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

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

28 "Subpart 3. Branch Captive Insurance Companies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the case of an alien captive insurance company seeking to become licensed as a branch captive insurance company, the alien captive insurance company shall petition the Commissioner to issue a certificate setting forth the Commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience, and 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.

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

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

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

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

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

"Subpart 4. Special Purpose Financial Captives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (2) Evidence of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-10-575. Minimum capital.

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

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

"§ 58-10-580. Authorized activities.

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

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

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

(1) Entering into SPFC contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-10-595. Issuing securities.

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

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

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

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

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

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

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

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

6 **"§ 58-10-605. Reinsurance.**

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

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

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

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

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

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

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

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

30 (1) Entering into SPFC contracts.

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

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

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

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

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

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

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

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

51 (j) No SPFC shall:

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

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

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

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

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

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

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

- (1) The Commissioner may limit investments by an SPFC to those categories and amounts of authorized investments delineated in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable and as amended from time to time.
- (2) No SPFC shall make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the Commissioner.
- (3) The Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the SPFC unless the investment is otherwise approved by the Commissioner in writing.

"§ 58-10-620. Dividends.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of Article 30 of this Chapter, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.
- (2) The commencement of a summary proceeding or other interim proceeding commenced before a delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security, SPFC contract, or the SPFC from taking any action required to make the payment.
- (3) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.
- (4) A receiver of an SPFC may not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.
- (5) The Commissioner may not seek to have an SPFC with protected cells declared insolvent as long as at least one of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle the SPFC's assets in compliance with subsection (e) of this section and other laws of this State.

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

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

"Subpart 5. Other Provisions.

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

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

- (1) G.S. 58-2-45. – Orders of Commissioner; when writing required.
- (2) G.S. 58-2-160. – Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
- (3) G.S. 58-2-162. – Embezzlement by insurance agents, brokers, or administrators.

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

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

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

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

...."

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

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

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

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

...."

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

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

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

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

...."

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

"§ 97-190. Excess insurance.

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

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

...."

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

"§ 105-228.3. Definitions.

The following definitions apply in this Article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 ...
4 (d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State treasury,
5 under the control of the Office of State Budget and Management. The proceeds of the charge
6 levied in this section and all fees collected under Articles 69 through 71 of this Chapter and
7 under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund.
8 The Fund shall be placed in an interest-bearing account and any interest or other income
9 derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only
10 pursuant to appropriation by the General Assembly and in accordance with the line item budget
11 enacted by the General Assembly. The Fund is subject to the provisions of the Executive
12 Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund.
13 All money credited to the Fund shall be used to reimburse the General Fund for the following:

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

17 ...
18 (10) Money appropriated to the Department of Insurance to pay its expenses
19 incurred in promoting North Carolina's captive insurance industry.

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

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

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

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

26 (3) Insurer. – Defined in G.S. 105-228.3."

27 **SECTION 8.** Nothing in this act shall be construed to obligate the General
28 Assembly to appropriate funds to implement the provisions of this act. This act becomes
29 effective July 1, 2013, if funds are appropriated for the 2013-2015 fiscal biennium to provide
30 the Department with regulatory staff and resources to license and regulate captive insurance
31 companies. If no funds are appropriated, then this act shall not become effective until July 1 of
32 a year in which the General Assembly appropriates funds to implement it.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

D

HOUSE BILL 473*
Committee Substitute Favorable 4/24/13
Committee Substitute #2 Favorable 5/1/13
Committee Substitute #3 Favorable 5/9/13
Fifth Edition Engrossed 5/14/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H473-PCS10418-TPx-43

Short Title: NC Captive Insurance Act.

(Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED
AN ACT TO ENACT THE NORTH CAROLINA CAPTIVE INSURANCE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 58 of the North Carolina General Statutes is amended by adding a new Part to read:

"Part 9. Captive Insurance Companies.

"Subpart 1. General Provisions.

"§ 58-10-335. Purpose.

(a) This Part shall be known and may be cited as the "North Carolina Captive Insurance Act."

(b) The purpose of this Part is to establish the procedures for the organization and regulation of the operations of captive insurance companies transacting insurance business within this State and thereby promote the general welfare of the people of this State.

"§ 58-10-340. Definitions.

The following definitions apply in this Part:

(1) Affiliated company. – Any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) Alien. – An alien company as defined in G.S. 58-1-5.

(3) Alien captive insurance company. – Any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in such jurisdiction.

(4) Association. – Any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities that meets the criteria set forth in either sub-subdivision a. or b. of this subdivision:

a. The member organizations of the association or the association itself, either alone or in conjunction with some or all of the member organizations, are described by any of the following:



* H 4 7 3 - P C S 1 0 4 1 8 - T P X - 4 3 *

1. Owning, controlling, or holding with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer.
 2. Having complete voting control over an association captive insurance company incorporated as a mutual insurer.
 3. Constituting all of the subscribers of an association captive insurance company formed as a reciprocal insurer.
 4. Having complete voting control over an association captive insurance company formed as a limited liability company.
- b. Each member organization of the association is one of the following:
1. A not-for-profit corporation, nonprofit association, or similar nonprofit organization.
 2. An entity or organization exempt from taxation under Section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c).
 3. A municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity, whether organized by local act or public act of the General Assembly, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district or other public body generally classified as a governmental body or governmental entity. This sub-sub-subdivision shall be liberally construed.
- (5) Association captive insurance company. – Any company that insures risks of the member organizations of an association, and that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself.
- (6) Branch business. – Any insurance business transacted by a branch captive insurance company in this State.
- (7) Branch captive insurance company. – Any alien captive insurance company licensed by the Commissioner to transact the business of insurance in this State through a business unit with a principal place of business in this State. A branch captive insurance company is a pure captive insurance company with respect to operations in this State, unless otherwise permitted by the Commissioner.
- (8) Branch operations. – Any business operations of a branch captive insurance company in this State.
- (9) Captive insurance company. – Any pure captive insurance company, association captive insurance company, industrial insured captive insurance company, risk retention group, protected cell captive insurance company, incorporated cell captive insurance company, or special purpose financial captive insurance company formed or licensed under this Part.
- (10) Commissioner. – Defined in G.S. 58-1-5.
- (11) Control, controlling, controlled by, or under common control with. – The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise; provided that such power is not the result of an official position or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent

(10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist. Notwithstanding this definition, for purposes of this Part, the fact that an SPFC exclusively provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control.

(12) Controlled unaffiliated business. – A person meeting all of the following:

a. The person is not in the corporate system of a parent and its affiliated companies in the case of a pure captive insurance company or is not in the corporate system of an industrial insured and its affiliated companies in the case of an industrial insured captive insurance company.

b. The person has an existing contractual relationship with a parent or one of its affiliated companies in the case of a pure captive insurance company or with an industrial insured or one of its affiliated companies in the case of an industrial insured captive insurance company.

c. The person's risks are managed by a pure captive insurance company or an industrial insured captive insurance company, as applicable, in accordance with G.S. 58-10-470.

(13) Counterparty. – An SPFC's parent or affiliated company or a ceding insurer to the SPFC contract. A nonaffiliated company may be designated a counterparty, but that designation is subject to the prior approval of the Commissioner.

(14) Court. – Defined in G.S. 58-30-10.

(15) Department. – Defined in G.S. 58-1-5.

(16) General account. – All assets and liabilities of a protected cell captive insurance company not attributable to a protected cell.

(17) Incorporated cell. – A protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company.

(18) Incorporated cell captive insurance company. – A protected cell captive insurance company that is established as a corporation or other legal entity separate from its incorporated cells that are also organized as separate legal entities.

(19) Industrial insured. – An insured that meets all of the following:

a. It procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer.

b. Its aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000).

c. It has at least 25 full-time employees.

(20) Industrial insured captive insurance company. – Any company that insures risks of the industrial insureds that comprise the industrial insured group and that may insure the risks of the affiliated companies of the industrial insureds and the risks of the controlled unaffiliated business of an industrial insured or its affiliated companies.

(21) Industrial insured group. – Any group of industrial insureds that collectively are described by any of the following:

a. Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer.

- 1 b. Have complete voting control over an industrial insured captive
2 insurance company incorporated as a mutual insurer.
3 c. Constitute all of the subscribers of an industrial insured captive
4 insurance company formed as a reciprocal insurer.
5 d. Have complete voting control over an industrial insured captive
6 insurance company formed as a limited liability company.
7 (22) Insurance securitization or securitization. – A transaction or a group of
8 related transactions which meet the requirements of sub-subdivisions a. and
9 b. of this subdivision:
10 a. The transactions include capital market offerings that are effected
11 through related risk transfer instruments and facilitating
12 administrative agreements where all or part of the result of such
13 transactions is used to fund the SPFC's obligations under a
14 reinsurance contract with a ceding insurer and by which one of the
15 following occur:
16 1. Proceeds are obtained by a SPFC, directly or indirectly,
17 through the issuance of securities by the SPFC or any other
18 person.
19 2. All of the following occur: (i) a person provides one or more
20 letters of credit or other assets for the benefit of the SPFC; (ii)
21 the Commissioner authorizes the SPFC to treat such letters of
22 credit or other assets as admitted assets for purposes of the
23 SPFC's annual report; and (iii) all or any part of such
24 proceeds, letters of credit, or assets, as applicable, are used to
25 fund the SPFC's obligations under a reinsurance contract with
26 a ceding insurer.
27 b. The transactions do not include the issuance of a letter of credit for
28 the benefit of the Commissioner to satisfy all or part of the SPFC's
29 capital and surplus requirements under G.S. 58-10-575.
30 (23) Member organization. – Any individual, corporation, limited liability
31 company, partnership, association, or other entity that belongs to an
32 association.
33 (24) Mutual corporation. – A corporation organized without stockholders and
34 includes a nonprofit corporation with members.
35 (25) Mutual insurer. – A company owned by its policyholders where no stock is
36 available for purchase on the stock exchanges.
37 (26) NAIC. – Defined in G.S. 58-1-5.
38 (27) Organizational documents. – The documents that must be submitted
39 pursuant to North Carolina law in order to legally form a business in this
40 State or to obtain a certificate of authority to transact business in this State.
41 (28) Parent. – An individual, corporation, limited liability company, partnership,
42 association, or other entity, or individual that directly or indirectly owns,
43 controls, or holds with power to vote more than fifty percent (50%) of the
44 outstanding voting of any of the following interests:
45 a. Securities of a pure captive insurance company organized as a stock
46 corporation.
47 b. Membership interests of a pure captive insurance company organized
48 as a nonprofit corporation.
49 c. Membership interests of a pure captive insurance company organized
50 as a limited liability company.
51 d. Securities of an SPFC.

- (29) Participant. – A person or an entity authorized to be a participant by G.S. 58-10-515, and any affiliate of a participant, that is insured by a protected cell captive insurance company, if the losses of the participant are limited through a participant contract.
- (30) Participant contract. – A contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.
- (31) Person. – Defined in G.S. 58-1-5.
- (32) Protected cell. – Either of the following:
- a. A separate account established by a protected cell captive insurance company formed or licensed under this Part, in which an identified pool of assets and liabilities is segregated and insulated by means of this Part from the remainder of the protected cell captive insurance company's assets and liabilities, in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company, with respect to the participants as set forth in the participant contracts.
- b. A separate account established and maintained by an SPFC for one SPFC contract and the accompanying insurance securitization with a counterparty.
- (33) Protected cell assets. – All assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.
- (34) Protected cell captive insurance company. – Any captive insurance company meeting all of the following:
- a. The minimum capital and surplus required by this Part are provided by one or more sponsors.
- b. The company is formed or licensed under this Part.
- c. The company insures the risks of separate participants through participant contracts.
- d. The company funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.
- (35) Protected cell liabilities. – All liabilities and other obligations identified with and attributed to a specific protected cell of a protected cell captive insurance company.
- (36) Pure captive insurance company. – Any company that insures risks of its parent and affiliated companies or a controlled unaffiliated business or businesses.
- (37) Risk retention group. – A captive insurance company organized under the laws of this State pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901, et seq., as amended, as a stock or mutual corporation or as a reciprocal or other limited liability entity. Risk retention groups formed under this Part are subject to all applicable insurance laws including, but not limited to, any applicable provisions in Articles 1, 2, 3, 7, 19, 22, 33, and 34 of this Chapter.
- (38) Securities. – Those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.

- 1 (39) SPFC or Special Purpose Financial Captive. – A captive insurance company
2 that has received a certificate of authority from the Commissioner for the
3 limited purposes provided for in this Part.
4 (40) SPFC contract. – A contract between the SPFC and the counterparty
5 pursuant to which the SPFC agrees to provide insurance or reinsurance
6 protection to the counterparty for risks associated with the counterparty's
7 insurance or reinsurance business.
8 (41) SPFC securities. – The securities issued by an SPFC.
9 (42) Sponsor. – Any person or entity that is approved by the Commissioner to
10 provide all or part of the capital and surplus required by this Part and to
11 organize and operate a protected cell captive insurance company.
12 (43) Surplus note. – An unsecured subordinated debt obligation deemed to be a
13 surplus certificate under this Part and otherwise possessing characteristics
14 consistent with paragraph 3 of the NAIC's Statement of Statutory
15 Accounting Principles No. 41, as amended.

16 **"§ 58-10-345. Licensing; authority; confidentiality.**

17 (a) Any captive insurance company, when permitted by its organizational documents,
18 may apply to the Commissioner for a license to do any and all insurance comprised in
19 G.S. 58-7-15; provided, however, that:

- 20 (1) No pure captive insurance company shall insure any risks other than those of
21 its parent and affiliated companies or a controlled unaffiliated business or
22 businesses.
23 (2) No association captive insurance company shall insure any risks other than
24 those of its association, those of the member organizations of its association,
25 and those of a member organization's affiliated companies.
26 (3) No industrial insured captive insurance company shall insure any risks other
27 than those of the industrial insureds that comprise the industrial insured
28 group, those of their affiliated companies, and those of the controlled
29 unaffiliated business of an industrial insured or its affiliated companies.
30 (4) No risk retention group shall insure any risks other than those of its members
31 and owners.
32 (5) No captive insurance company shall provide personal motor vehicle or
33 homeowner's insurance coverage or any component thereof.
34 (6) No captive insurance company shall accept or cede reinsurance except as
35 provided in G.S. 58-10-445 and G.S. 58-10-605.
36 (7) No captive insurance company shall provide accident and health insurance
37 on a direct basis.
38 (8) No captive insurance company shall provide workers' compensation and
39 employer's liability insurance on a direct basis.
40 (9) No captive insurance company shall provide life insurance or annuities on a
41 direct basis.

42 (b) No captive insurance company shall transact any insurance business in this State
43 unless:

- 44 (1) It obtains a license from the Commissioner pursuant to subsection (c) of this
45 section authorizing it to do insurance business in this State.
46 (2) Its board of directors or committee of managers or, in the case of a
47 reciprocal insurer, its subscribers' advisory committee holds at least one
48 meeting each year in this State.
49 (3) It maintains its principal place of business in this State.
50 (4) It appoints a registered agent to accept service of process and to otherwise
51 act on its behalf in this State, provided that whenever such registered agent

1 cannot with reasonable diligence be found at the registered office of the
2 captive insurance company, the Commissioner shall be an agent of such
3 captive insurance company upon whom any process, notice, or demand may
4 be served and such service shall be done in accordance with G.S. 58-16-30.

5 (c) In order to receive a license to issue policies of insurance as a captive insurance
6 company in this State, an applicant business entity shall meet all of the following requirements:

7 (1) The applicant business entity shall submit its organizational documents to
8 the Commissioner. If the Commissioner approves the organizational
9 documents, then the Commissioner shall issue a letter to the applicant
10 certifying the Commissioner's approval. The applicant business entity shall
11 submit the organizational documents, along with a copy of the approval
12 letter issued by the Commissioner, and the required filing fees for
13 organizational documents prescribed by North Carolina law to the Secretary
14 of State for filing. Upon filing the organizational documents, the Secretary
15 of State shall issue a certificate of filing to the applicant. The applicant
16 business entity shall submit a copy of the certificate of filing relative to the
17 applicant's organizational documents issued by the Secretary of State to the
18 Commissioner.

19 (2) The applicant business entity shall file a statement under oath of its president
20 and secretary showing its financial condition.

21 (3) The applicant business entity shall file its plan of operation.

22 (4) The applicant business entity shall file other documents as required by the
23 Commissioner.

24 (5) The applicant business entity shall also file with the Commissioner evidence
25 of all of the following:

26 a. The amount and liquidity of its assets relative to the risks to be
27 assumed.

28 b. The adequacy of the expertise, experience, and character of the
29 person or persons who will manage it.

30 c. The overall soundness of its plan of operation.

31 d. The adequacy of the loss prevention programs of its insureds.

32 e. Such other factors deemed relevant by the Commissioner in
33 ascertaining whether the applicant business entity will be able to
34 meet its policy obligations.

35 (6) No less than the amount required by G.S. 58-10-370 shall be paid in by the
36 applicant business entity and deposited with the Commissioner. In the
37 alternative, an irrevocable letter of credit in that amount and acceptable to
38 the Commissioner shall be filed with the Commissioner.

39 (7) The applicant business entity shall submit to the Commissioner for approval
40 a description of the coverages, deductibles, coverage limits, and rates,
41 together with such additional information as the Commissioner may require.

42 (d) Whenever a captive insurance company desires to amend the organizational
43 documents submitted pursuant to subdivision (c)(1) of this section, the company shall submit
44 the amended organizational documents to the Commissioner. If the Commissioner approves the
45 amendment, then the Commissioner shall issue a letter to the applicant certifying the
46 Commissioner's approval. The applicant business entity shall submit the organizational
47 documents, along with a copy of the approval letter issued by the Commissioner, and the
48 required filing fees for organizational documents prescribed in North Carolina law to the
49 Secretary of State for filing. Upon filing the organizational documents, the Secretary of State
50 shall issue a certificate of filing to the applicant. The applicant shall submit a copy of the

1 certificate of filing relative to the applicant's organizational documents issued by the Secretary
2 of State to the Commissioner.

3 (e) If a captive insurance company makes any subsequent material change to any item
4 in the description submitted pursuant to subdivision (c)(7) of this section, then the captive
5 insurance company shall submit an appropriate revision to the Commissioner for approval and
6 shall not offer any additional kinds of insurance until a revision of such description is approved
7 by the Commissioner. The captive insurance company shall inform the Commissioner of any
8 material change in rates within 30 days of the adoption of such change.

9 (f) Information submitted pursuant to this subsection is confidential and may be made
10 public by the Commissioner or the Commissioner's designee only upon an order of a court of
11 competent jurisdiction except:

12 (1) This subdivision shall not apply to any risk retention group.

13 (2) The Commissioner shall have the discretion to disclose such information to a
14 public official having jurisdiction over the regulation of insurance in another
15 state, provided that:

16 a. The public official agrees in writing to maintain the confidentiality of
17 such information; and

18 b. The laws of the state in which the public official serves require the
19 information to be and to remain confidential.

20 (3) Organizational documents filed with the Secretary of State shall continue to
21 be nonconfidential public records in the Secretary of State's office.

22 (g) The Commissioner is authorized to retain legal, financial, and examination services
23 from outside the Department, the costs of which shall be reimbursed by the applicant.
24 G.S. 58-2-160 shall apply to examinations, investigations, and processing conducted under the
25 authority of this section.

26 (h) If the Commissioner is satisfied that the documents and statements filed by an
27 applicant captive insurance company comply with this section, then the Commissioner shall
28 grant a license authorizing it to do insurance business in this State.

29 **"§ 58-10-350. Commissioner use of consultants and other professionals.**

30 The Commissioner may contract with consultants and other professionals to expedite and
31 complete the application process, examinations, and other regulatory activities required
32 pursuant to this Part. Such contracts for financial, legal, examination, and other services shall
33 not be subject to any of the following:

34 (1) G.S. 114-2.3.

35 (2) G.S. 147-17.

36 (3) Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with
37 rules and procedures adopted under those Articles concerning procurement,
38 contracting, and contract review.

39 **"§ 58-10-355. Organizational examination.**

40 In addition to the processing of the application, an organizational investigation or
41 examination may be performed before an applicant is licensed. Such investigation or
42 examination shall consist of a general survey of the applicant's corporate records, including
43 charters, bylaws, and minute books; verification of capital and surplus; verification of principal
44 place of business; determination of assets and liabilities; and a review of such other factors as
45 the Commissioner deems necessary.

46 **"§ 58-10-360. Designation of captive manager.**

47 Before licensing, captive insurance companies shall report in writing to the Commissioner
48 the name and address of the manager designated to manage the captive insurance company.
49 The Commissioner shall approve the captive manager and may require the submission of
50 additional information regarding the proposed captive manager in a form and manner as the
51 Commissioner may designate.

"§ 58-10-365. Names of companies.

No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in this State nor any name likely to mislead the public. Any name adopted by a captive insurance company shall comply with the requirements of State law.

"§ 58-10-370. Capital and surplus requirements.

(a) No captive insurance company shall be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

- (1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars (\$250,000) or such other amount determined by the Commissioner.
- (2) In the case of an association captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (4) In the case of a risk retention group, not less than one million dollars (\$1,000,000).
- (5) In the case of a protected cell captive insurance company, not less than two hundred fifty thousand dollars (\$250,000).

(b) The Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business to be transacted.

(c) Capital and surplus shall be in the form of cash or an irrevocable letter of credit issued by a bank approved by the Commissioner.

"§ 58-10-375. Dividends and distributions.

No captive insurance company shall pay a dividend or other distribution from capital or surplus without the prior approval of the Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the Commissioner. A captive insurance company may otherwise make such distributions as are in conformity with its purposes and approved by the Commissioner.

"§ 58-10-380. Formation of captive insurance companies.

(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

(b) An association captive insurance company, an industrial insured captive insurance company, or a risk retention group may be any of the following:

- (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (2) Incorporated as a mutual corporation.
- (3) Organized as a reciprocal insurer in accordance with Article 15 of this Chapter.
- (4) Organized as a manager-managed limited liability company.

(c) A captive insurance company incorporated or organized in this State shall have not less than three incorporators or three organizers of whom not less than one shall be a resident of this State.

(d) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(e) In the case of a captive insurance company formed as a corporation, at least one of the members of the board of directors shall be a resident of this State. In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the

1 subscribers' advisory committee shall be a resident of this State. In the case of a captive
2 insurance company formed as a limited liability company, at least one of the managers shall be
3 a resident of this State.

4 (f) Captive insurance companies formed as corporations, limited liability companies,
5 partnerships, or as nonprofit corporations under this Part shall have the privileges provided in
6 and be subject to all State statutes and laws, as applicable, provided that this Part shall control
7 in the event of a conflict.

8 (g) Mergers, consolidations, conversions, mutualizations, acquisitions,
9 redomestications, or other similar transactions of captive insurance companies shall be subject
10 to the same provisions of this Chapter applicable to traditional insurance companies, except:

11 (1) The Commissioner may, upon request of an insurer party to a merger
12 authorized under this subsection, waive such applicable requirements.

13 (2) The Commissioner may waive or modify the requirements for public notice
14 and hearing.

15 (3) An alien insurer may be a party to a merger authorized under this subsection,
16 provided that the requirements for a merger between a captive insurance
17 company and a foreign insurer under this Chapter shall apply to a merger
18 between a captive insurance company and an alien insurer under this
19 subsection. For the purposes of this subdivision, an alien insurer shall be
20 treated as a foreign insurer under this Chapter, and the domicile of the alien
21 shall be the equivalent to that of another state.

22 (h) Captive insurance companies formed as reciprocal insurers under this Part shall
23 have the privileges provided in and be subject to Article 15 of this Chapter in addition to this
24 Part, provided that this Part shall control in the event of a conflict. To the extent a reciprocal
25 insurer is made subject to other provisions of this Chapter pursuant to Article 15 of this
26 Chapter, such provisions shall not be applicable to a reciprocal insurer formed under this Part
27 unless such provisions are expressly made applicable to captive insurance companies under this
28 Part.

29 (i) The articles of incorporation or bylaws of a captive insurance company formed as a
30 corporation may authorize a quorum of its board of directors to consist of no fewer than
31 one-third of the fixed or prescribed number of directors.

32 (j) The subscribers' agreement or other organizing document of a captive insurance
33 company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory
34 committee to consist of no fewer than one-third of the number of its members.

35 (k) With the Commissioner's approval, a captive insurance company organized as a
36 stock insurer may convert to a nonprofit corporation with one or more members by filing with
37 the Secretary of State an election for such conversion, provided that:

38 (1) The election shall certify that, at the time of the company's original
39 organization and at all times thereafter, the company has conducted its
40 business in a manner not inconsistent with a nonprofit purpose.

41 (2) At the time of the filing of its election, the company shall file with both the
42 Commissioner and the Secretary of State articles of conversion, including
43 articles of incorporation consistent with this Part and with all other
44 applicable State statutes and laws.

45 (l) In the case of a captive insurance company formed as a limited liability company, a
46 reciprocal insurance company, or mutual insurance company, any proxy executed by the
47 members, subscribers, and policyholders of each shall be valid if executed and transmitted in
48 compliance with all applicable State statutes and laws.

49 "§ 58-10-385. Directors.

1 (a) Every captive insurance company shall report to the Commissioner within 30 days
2 after any change in its executive officers or directors, including in its report a biographical
3 affidavit for each new officer or director.

4 (b) No director, officer, or employee of a captive insurance company shall, except on
5 behalf of the captive insurance company, accept or be the beneficiary of, any fee, brokerage,
6 gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment,
7 or exchange made by or for the captive insurance company, but such person may receive
8 reasonable compensation for necessary services rendered to the captive insurance company in
9 his or her usual private, professional, or business capacity.

10 (c) Any profit or gain received by or on behalf of any person in violation of this section
11 shall inure to and be recoverable by the captive insurance company.

12 **"§ 58-10-390. Conflict of interest.**

13 (a) Each captive insurance company chartered in this State is required to adopt a
14 conflict of interest statement for officers, directors, and key employees. Such statement shall
15 disclose that the individual has no outside commitments, personal or otherwise, that would
16 divert him or her from his or her duty to further the interests of the captive insurance company
17 he or she represents, but this shall not preclude such person from being a director or officer in
18 more than one insurance company.

19 (b) Each officer, director, and key employee shall file such disclosure with the Board of
20 Directors yearly.

21 **"§ 58-10-395. Change of business.**

22 (a) Any material change in a captive insurance company's business plan that was filed
23 with the Commissioner at the time of initial application and any subsequent amendment of the
24 plan requires prior approval from the Commissioner.

25 (b) Any change in any other information filed with the application must be filed with
26 the Commissioner within 60 days but does not require prior approval.

27 **"§ 58-10-400. Insurance manager and intermediaries.**

28 No person shall act in or from this State as a managing general agent, producer, or
29 reinsurance intermediary for captive business without the authorization of the Commissioner.
30 Application for such authorization must be on a form prescribed by the Commissioner.

31 **"§ 58-10-405. Annual reports.**

32 (a) No captive insurance companies shall be required to make any annual report to the
33 Commissioner except as provided in this Part.

34 (b) Prior to March 1 of each year, and prior to March 15 of each year in the case of pure
35 captive insurance companies or industrial insured captive insurance companies, each captive
36 insurance company shall submit to the Commissioner a report of its financial condition,
37 verified by oath of two of its executive officers. Each captive insurance company shall report
38 using generally accepted accounting principles, unless the Commissioner requires, approves, or
39 accepts the use of statutory accounting principles or other comprehensive basis of accounting.
40 The Commissioner may require, approve, or accept any appropriate or necessary modifications
41 of the statutory accounting principles or other comprehensive basis of accounting for the type
42 of insurance and kinds of insurers to be reported upon. The Commissioner may require
43 additional information to supplement such report. Except as otherwise provided, each risk
44 retention group and association captive insurance company shall file its report in the form
45 required by G.S. 58-2-165, and each risk retention group and association captive insurance
46 company shall comply with the requirements set forth in G.S. 58-4-5. All other captive
47 insurance companies shall report on forms adopted by the Commissioner. G.S. 58-10-345(f)
48 shall apply to each report filed pursuant to this section. Branch captive insurance companies
49 shall file the report required by this section unless otherwise required by G.S. 58-10-545.
50 Special Purpose Financial Captive insurance companies shall report in accordance with
51 G.S. 58-10-625.

(c) A pure captive insurance company or an industrial insured captive insurance company may make written application to the Commissioner for filing the required report on an alternative reporting date based on the company's fiscal year-end. If an alternative reporting date is granted by the Commissioner, then:

(1) The annual report is due 75 days after the fiscal year-end.

(2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company shall file, prior to March 15 of each year for each calendar year-end, pages 1, 2, 3, and 5 of the "Captive Annual Statement: Pure or Industrial Insured," verified by oath of two of its executive officers.

"§ 58-10-420. Annual audit and actuarial certification.

(a) All captive insurance companies shall have an annual audit by an independent certified public accountant and shall file such audited financial report with the Commissioner on or before June 30 for the prior calendar year.

(b) Captive insurance companies that have received approval to report on other than a calendar year basis pursuant to G.S. 58-10-405 shall file such statements within 180 days after the end of their fiscal year.

(c) Captive insurance companies with less than one million two hundred thousand dollars (\$1,200,000) in written premium may make a written request for exemption from the annual audit requirement. Such request must be made at least 90 days prior to the captive insurance company's fiscal year-end or as otherwise required by the Commissioner. Requests will be considered on a case-by-case basis and may be subject to the Commissioner receiving an annual audit of the captive insurance company's parent company in lieu of the annual audit of the captive insurance company.

(d) The annual audit report shall be considered part of the captive insurance company's annual report of financial condition except with respect to the date by which it must be filed with the Commissioner. The annual audit shall consist of the following:

(1) Opinion of independent certified public accountant. – Financial statements furnished pursuant to this section shall be audited by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants or statutory accounting principles in accordance with the NAIC Accounting Practices and Procedures Manual in effect for the period covered by the report. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the captive insurance company on stationery of the accountant showing the address of issuance and shall be signed and dated.

(2) Report of evaluation of internal controls. – This report shall include an evaluation of the internal controls of the captive insurance company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including, but not limited to, such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards or statutory accounting principles and the report filed with the Commissioner. An exemption from this evaluation may be granted on a case-by-case basis upon written request to the Commissioner.

(3) Accountant's letter of qualifications. – The accountant shall furnish the captive insurance company, for inclusion in the filing of the audited annual report, a letter stating:

a. That the accountant is independent with respect to the captive insurance company and conforms to the standards of the profession

- as contained in the Code of Professional Ethics, pronouncements of the American Institute of Certified Public Accountants, and pronouncements of the Financial Accounting Standards Board.
- b. The general background and experience of the staff engaged in the audit, including the experience in auditing captives or other insurance companies.
- c. That the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this section with the Commissioner.
- d. That the accountant consents to the requirements of G.S. 58-10-422(b) and (c) and that the accountant consents and agrees to make available for review by the Commissioner, the Commissioner's appointed agent, or other designee the work papers as defined in G.S. 58-10-422(c).
- e. That the accountant is properly licensed by an appropriate state licensing authority and that he or she is a member in good standing of the American Institute of Certified Public Accountants.
- (4) Financial statements. – Statements required shall be as follows:
- a. Balance sheets reporting assets, liabilities, capital, and surplus.
- b. Statements of operations.
- c. Statements of cash flow.
- d. Statements of changes in capital and surplus.
- e. Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the captive insurance company and approved by the Commissioner, and shall include:
1. A reconciliation of differences, if any, between the audited financial report and the report of its financial condition filed with the Commissioner in accordance with G.S. 58-10-405(b).
2. A summary of ownership and relationship of the captive insurance company and all affiliated corporations or companies insured by the captive insurance company.
3. A narrative explanation of all material transactions and balances with the captive insurance company.
- (5) Certification of loss reserves and loss expense reserves. – The annual audit shall be filed with a Statement of Actuarial Opinion evaluating the captive insurance company's loss reserves and loss expense reserves. The individual who prepares the Statement of Actuarial Opinion shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated competence in loss reserve evaluation to the Commissioner. Certification shall be in such form as the Commissioner deems appropriate.

"§58-10-422. Independent certified public accountants.

(a) A captive insurance company, after becoming subject to this Part, shall within 60 days report to the Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in G.S. 58-10-420.

(b) A captive insurance company shall require its independent certified public accountant to immediately notify in writing an officer and all members of the board of directors of the captive insurance company of any determination by the independent certified public

1 accountant that the captive insurance company has materially misstated its financial condition
2 in its report to the Commissioner as required in G.S. 58-10-405. The independent certified
3 public accountant shall furnish such notification to the Commissioner within five working days
4 of notifying the captive insurance company.

5 (c) A captive insurance company shall require its independent certified public
6 accountant to make available for review by the Commissioner or his or her appointed agent the
7 work papers prepared in the conduct of the audit of the captive insurance company. The captive
8 insurance company shall require that the independent certified public accountant retain the
9 audit work papers for a period of not less than five years after the period reported upon. The
10 forementioned review by the Commissioner shall be considered an examination, and all
11 working papers obtained during the course of such examination shall be confidential. The
12 captive insurance company shall require that the independent certified public accountant
13 provide copies, in such form as the Commissioner deems appropriate, of any of the working
14 papers which the Commissioner considers relevant. Such working papers may be retained by
15 the Commissioner. "Work papers" as referred to in this section include, but are not necessarily
16 limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts,
17 copies of captive insurance company records, or other documents prepared or obtained by the
18 independent certified public accountant and the independent certified public accountant's
19 employees in the conduct of their audit of the captive insurance company.

20 (d) The lead audit partner may not act in that capacity for more than five consecutive
21 years. For purposes of this subsection, lead audit partner means the partner having primary
22 responsibility for the audit. The person shall be disqualified from acting in that or similar
23 capacity for the captive insurance company for a period of five consecutive years. A captive
24 insurance company may make application to the Commissioner for relief from the above
25 rotation requirement on the basis of unusual circumstances. This application should be made at
26 least 30 days before the end of the calendar year. The Commissioner may consider the
27 following factors in determining if the relief should be granted:

28 (1) Number of partners, expertise of the partners, or the number of insurance
29 clients in the firm;

30 (2) Premium volume of the captive insurance company; or

31 (3) Number of jurisdictions in which the insurer transacts business.

32 **"§ 58-10-425. Deposit requirement.**

33 (a) Whenever the Commissioner deems that the financial condition of a captive
34 insurance company warrants additional security beyond that required pursuant to
35 G.S. 58-10-345(c)(6), the Commissioner may require a captive insurance company to deposit
36 with the Commissioner additional cash or securities approved by the Commissioner or,
37 alternatively, to furnish the Commissioner a clean irrevocable letter of credit issued by a bank
38 chartered by the State or by a member bank of the Federal Reserve System and approved by the
39 Commissioner.

40 (b) A captive insurance company may receive interest or dividends from deposits held
41 by the Commissioner or exchange the deposits for others of equal value with the approval of
42 the Commissioner.

43 (c) If a captive insurance company discontinues business, the Commissioner shall
44 return deposits held by the Commissioner only after being satisfied that all obligations of the
45 captive insurance company have been discharged.

46 **"§ 58-10-430. Examinations.**

47 (a) Whenever the Commissioner determines it to be prudent, the Commissioner shall
48 visit a captive insurance company and inspect and examine its affairs to ascertain its financial
49 condition, its ability to fulfill its obligations, and whether it has complied with this Part. The
50 expenses and charges of the examination shall be paid by the captive insurance company.

51 (b) G.S. 58-2-160 shall apply to examinations conducted under this section.

(c) All examination reports, preliminary examination reports or results, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the Commissioner or an employee or agent of the Commissioner. Nothing in this subsection shall prevent the Commissioner from using such information in furtherance of the Commissioner's regulatory authority under this Chapter. The Commissioner shall have the discretion to grant access to such information to public officials having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this State or any other state or agency of the federal government at any time only if the officials receiving the information agree in writing to maintain the confidentiality of the information in a manner consistent with this subsection.

"§ 58-10-435. License suspension or revocation.

(a) The license of a captive insurance company may be suspended or revoked if the Commissioner finds, upon examination, hearing, or other evidence, that a captive insurance company has committed the violations described in subdivisions (1) through (7) of this subsection, or met the criteria in subdivisions (8) through (10) of this subsection, and that the suspension or revocation is in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this Chapter:

- (1) Insolvency or impairment of capital or surplus.
- (2) Failure to meet the requirements of G.S. 58-10-370.
- (3) Refusal or failure to submit an annual report, as required by this Part, or any other report or statement required by law or by lawful order of the Commissioner.
- (4) Failure to comply with its own charter, bylaws, or other organizational document.
- (5) Failure to submit to or pay the cost of an examination or any legal obligation relative to an examination, as required by this Part.
- (6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders.
- (7) Failure otherwise to comply with the laws of this State.
- (8) Failure to commence business according to its plan of operation within two years of being licensed.
- (9) Failure to carry on insurance business in or from this State.
- (10) By request of the captive insurance company.

(b) Before the Commissioner suspends or revokes the license of a captive insurance company under subdivisions (a)(7) or (a)(8) of this section, the Commissioner shall give the captive insurance company notice in writing of the grounds on which the Commissioner proposes to suspend or revoke the license and shall afford the captive insurance company an opportunity to make objection in writing within the period of 30 days after receipt of notice. The Commissioner shall take into consideration any objection received by the Commissioner within that period and, if the Commissioner decides to suspend or revoke the license, cause the order of suspension or revocation to be served on the captive insurance company.

"§ 58-10-440. Investment requirements.

(a) Except as may be otherwise authorized by the Commissioner, association captive insurance companies and risk retention groups shall comply with the investment requirements contained in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable. Notwithstanding any other provision of this Chapter, the Commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company, industrial insured captive insurance company, protected cell captive insurance company, incorporated cell captive insurance company, or special purpose financial captive insurance company shall be subject to any restrictions on allowable investments, provided that the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(c) No pure captive insurance company shall make a loan to or an investment in its parent company or affiliates without prior written approval of the Commissioner, and any such loan or investment shall be evidenced by documentation approved by the Commissioner. Loans of minimum capital and surplus funds required by G.S. 58-10-370 are prohibited.

(d) Notwithstanding this section or G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, an association captive insurance company of an association described in G.S. 58-10-340(4)(b) may hold any interest in qualified headquarters property, and the qualified headquarters property shall be admitted assets and authorized investments of the association captive insurance company. The net book value of the qualified headquarters property deemed admitted and authorized under this subsection may not exceed two million five hundred thousand dollars (\$2,500,000), and an association captive insurance company holding qualified headquarters property pursuant to this subsection shall at all times maintain total surplus, without regard to the qualified headquarters property, of at least the sum of (i) fifty percent (50%) of the net book value of the qualified headquarters property and (ii) the minimum capital and surplus requirements. For purposes of this subsection, "qualified headquarters property" includes the real property and the building in which the principal office of the association captive insurance company is located and also includes any improved and unimproved real property of the association captive insurance company that is located within 1,500 feet of the company's principal office.

"§ 58-10-445. Reinsurance.

(a) Any captive insurance company may provide reinsurance as authorized by this Chapter on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with this Chapter. If the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer. The Commissioner shall have the discretion to allow a captive insurance company to take credit for the reinsurance of risks or portions of risks ceded to an unauthorized reinsurer, after review, on a case-by-case basis. The Commissioner may require any documents, financial information, or other evidence that such an unauthorized reinsurer will be able to demonstrate adequate security for its financial obligations.

(c) In addition to reinsurers authorized by this Chapter, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association to the extent authorized by the Commissioner. The Commissioner may require any documents, financial information, or other evidence that such a pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that in the Commissioner's judgment are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(d) Insurance by a captive insurance company of any workers' compensation or accident and health-qualified self-insured plan shall only be in the form of reinsurance.

(e) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

(f) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of

1 the liability of the ceding insurer under the contract reinsured without diminution because of
2 the insolvency of the ceding insurer.

3 (g) Reinsurance under this section shall be effected through a written agreement of
4 reinsurance setting forth the terms, provisions, and conditions governing such reinsurance. The
5 Commissioner may require that complete copies of all reinsurance treaties and contracts be
6 filed and approved by the Commissioner.

7 **"§ 58-10-450. Membership in rating organizations; exemption from compulsory**
8 **associations.**

9 (a) No captive insurance company shall be required to join a rating organization.

10 (b) No captive insurance company shall be permitted to join or contribute financially to
11 any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any such
12 captive insurance company, or any insured or affiliate thereof, receive any benefit from any
13 such plan, pool, association, or guaranty or insolvency fund for claims arising out of the
14 operations of such captive insurance company.

15 **"§ 58-10-455. Taxation.**

16 A captive insurance company is taxed in accordance with Article 8B of Chapter 105 of the
17 General Statutes.

18 **"§ 58-10-460. Adoption and amendment of rules by Commissioner.**

19 The Commissioner may adopt and, from time to time, amend such rules relating to captive
20 insurance companies as are necessary to enable the Commissioner to carry out the provisions of
21 this Part.

22 **"§ 58-10-465. Applicable provisions.**

23 No provisions of this Chapter, other than those contained in this Part or as expressly
24 provided in this Part, shall apply to captive insurance companies. Risk retention groups shall
25 have the privileges and be subject to Article 22 of this Chapter in addition to the applicable
26 provisions of this Part.

27 **"§ 58-10-470. Establishment of standards regarding risk management.**

28 The Commissioner may adopt rules establishing standards to ensure that a parent or its
29 affiliated company, or an industrial insured or its affiliated company, is able to exercise control
30 of the risk management function of any controlled unaffiliated business to be insured by a pure
31 captive insurance company or an industrial insured captive insurance company, respectively;
32 provided, however, that until such time as rules under this section are adopted, the
33 Commissioner may approve the coverage of such risks by a pure captive insurance company or
34 an industrial insured captive insurance company.

35 **"§ 58-10-475. Supervision; rehabilitation; liquidation.**

36 Except as otherwise provided in this Part, the terms and conditions set forth in Article 30 of
37 this Chapter shall apply in full to captive insurance companies formed or licensed under this
38 Part.

39 **"§ 58-10-480. Authority for expenditure of public funds.**

40 Any municipality, county, authority, utility district, or other public body generally
41 classified as a governmental body or governmental entity whether chartered or organized by
42 local act or public act of the General Assembly, or otherwise, or any agency, board, or
43 commission of any municipality, metropolitan government, county, authority, utility district, or
44 other public body generally classified as a governmental body or governmental entity may
45 expend public funds for the purchase of capital stock in a captive insurance company or to
46 provide guaranty capital in a mutual captive insurance company, provided that at the time of
47 authorization of expenditure of public funds adequate insurance markets in the United States
48 are not available to cover the risks, hazards, and liabilities of the public body or that the needed
49 coverage is only available at excessive rates or with unreasonable deductibles.

50 **"§ 58-10-485. Violations and penalties.**

(a) If, after providing the opportunity for a contested case hearing held in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, the Commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized to transact the business of insurance under this Part has violated any provision of this Part or any rule or regulation authorized by this Part, the Commissioner may order:

(1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation.

(2) Payment of a monetary penalty pursuant to G.S. 58-2-70.

(3) The suspension or revocation of the insurer's, person's, or entity's license.

(b) Whenever the Commissioner has evidence that any person has violated or is violating any provisions of this Part, or has violated or is violating any order or requirement of the Commissioner issued by the Commissioner under this Part, and that the interests of policyholders, creditors, or the public may be irreparably harmed by delay, the Commissioner may issue an emergency cease and desist order that shall become effective on the date specified in the order. The emergency cease and desist order shall also include a notice of hearing, which shall be conducted as provided under Article 3A of Chapter 150B of the General Statutes. However, the person ordered to cease and desist under this subsection may request and shall be granted an expedited review of the order. The emergency order shall remain in effect prior to and during the proceedings, unless modified by the Commissioner.

"§ 58-10-495. Captive insurance companies reinsuring life insurance policies.

(a) A captive insurance company that reinsures life insurance policies, including term, universal, and variable life policies, and related guarantees and riders, shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring life insurance policies.

(b) For purposes of the annual report required pursuant to G.S. 58-10-405, a captive insurance company described by subsection (a) of this section shall comply with the following requirements:

(1) If the company uses statutory accounting principles, it shall submit the annual report in the form of the annual statement approved by the NAIC for life insurers, as modified or supplemented by the Commissioner, unless the Commissioner requires or approves a different form of annual report.

(2) If the company uses generally accepted accounting principles, including any appropriate modifications or adaptations thereto approved by the Commissioner, it shall submit the annual report in a form approved by the Commissioner.

"Subpart 2. Protected Cell Captive Insurance Companies.

"§ 58-10-500. Forming a protected cell captive insurance company.

(a) One or more sponsors may form a protected cell captive insurance company under this Subpart.

(b) A protected cell captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

"§ 58-10-505. Additional filing requirements for applicant protected cell captive insurance companies.

In addition to the information required by G.S. 58-10-345(c), each applicant protected cell captive insurance company shall file with the Commissioner all of the following:

(1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the Commissioner, and how it will report such experience to the Commissioner.

- (2) A statement acknowledging that all records of the applicant, including records pertaining to any protected cells, shall be made available for inspection or examination by the Commissioner or the Commissioner's designated agent.
- (3) All contracts or sample contracts between the applicant and any participants.
- (4) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

"§ 58-10-510. Establishment of protected cells.

(a) A protected cell captive insurance company formed or licensed under this Part may establish and maintain one or more incorporated or unincorporated protected cells, to insure risks of one or more participants, subject to the following conditions:

- (1) A protected cell captive insurance company may establish one or more protected cells if the Commissioner has approved in writing a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company with respect to each protected cell. A plan of operation shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell, provided that the Commissioner may require additional information in the plan of operation.
- (2) Upon the Commissioner's written approval of the plan of operation, the protected cell captive insurance company may attribute insurance obligations with respect to its insurance business to the protected cell in accordance with the approved plan of operation.
- (3) A protected cell shall have its own distinct name or designation that shall include the words "protected cell" or "incorporated cell."
- (4) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.
- (5) An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner. Each incorporated protected cell of a protected cell captive insurer shall be treated as a captive insurer for purposes of this Part. Unless otherwise permitted by the organizational documents of a protected cell captive insurer, each incorporated protected cell of the protected cell captive insurer must have the same directors, secretary, and registered office as the protected cell captive insurer.
- (6) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation and participant contracts approved by the Commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell shall be in cash or in readily marketable securities with established market values.

(b) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company, unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the protected cell. No protected cell captive insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, the

1 protected cell captive insurance company may allow for a security interest to attach to protected
2 cell assets or a protected cell account when the security interest is in favor of a creditor of the
3 protected cell and otherwise allowed under applicable law.

4 (c) This Part shall not be construed to prohibit the protected cell captive insurance
5 company from contracting with or arranging for an investment advisor, commodity trading
6 advisor, or other third party to manage the protected cell assets of a protected cell, if all
7 remuneration, expenses, and other compensation of the third-party advisor or manager are
8 payable from the protected cell assets of that protected cell and not from the protected cell
9 assets of other protected cells or the assets of the protected cell captive insurance company's
10 general account.

11 (d) A protected cell captive insurance company shall establish administrative and
12 accounting procedures necessary to properly identify (i) the one or more protected cells of the
13 protected cell captive insurance company and (ii) the assets and liabilities attributable to each
14 protected cell. The directors of a protected cell captive insurance company shall keep protected
15 cell assets and liabilities:

16 (1) Separate and separately identifiable from the assets and liabilities of the
17 protected cell captive insurance company's general account.

18 (2) Attributable to one protected cell separate and separately identifiable from
19 protected cell assets and protected cell liabilities attributable to other
20 protected cells.

21 If this subsection is violated, then the remedy of tracing is applicable to protected cell assets
22 when commingled with protected cell assets of other protected cells or the assets of the
23 protected cell captive insurance company's general account. The remedy of tracing shall not be
24 construed as an exclusive remedy.

25 (e) When establishing a protected cell, the protected cell captive insurance company
26 shall attribute to the protected cell assets a value at least equal to the reserves and other
27 insurance liabilities attributed to that protected cell.

28 (f) Each protected cell shall be accounted for separately on the books and records of the
29 protected cell captive insurance company to reflect (i) the financial condition and results of
30 operations of such protected cell, (ii) net income or loss, (iii) dividends or other distributions to
31 participants, and (iv) such other factors as may be provided in the participant contract or
32 required by the Commissioner.

33 (g) No asset of a protected cell shall be chargeable with liabilities arising out of any
34 other insurance business the protected cell captive insurance company may conduct.

35 (h) No sale, exchange, or other transfer of assets shall be made by such protected cell
36 captive insurance company between or among any of its protected cells without the consent of
37 such protected cells.

38 (i) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a
39 protected cell to a protected cell captive insurance company or participant without the
40 Commissioner's approval. In no event shall the Commissioner's approval be given if the sale,
41 exchange, transfer, dividend, or distribution would result in the insolvency or impairment of a
42 protected cell.

43 (j) All attributions of assets and liabilities to the protected cells and the general account
44 shall be in accordance with the plan of operation approved by the Commissioner. No other
45 attribution of assets or liabilities shall be made by a protected cell captive insurance company
46 between its general account and any protected cell, or between any protected cells. The
47 protected cell captive insurance company shall attribute all insurance obligations, assets, and
48 liabilities relating to a reinsurance contract entered into with respect to a protected cell to such
49 protected cell. The performance under such reinsurance contract and any tax benefits, losses,
50 refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell
51 captive insurance company is a party, including any payments made by or due to be made to

1 the protected cell captive insurance company pursuant to the terms of such agreement, shall
2 reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that
3 are attributed to such protected cell.

4 (k) In connection with the conservation, rehabilitation, or liquidation of a protected cell
5 captive insurance company, the assets and liabilities of a protected cell shall, to the extent the
6 Commissioner determines they are separable, at all times be kept separate from and shall not be
7 commingled with those of other protected cells and the protected cell captive insurance
8 company.

9 (l) Each protected cell captive insurance company shall annually file with the
10 Commissioner such financial reports as required by the Commissioner. Any such financial
11 report shall include without limitation accounting statements detailing the financial experience
12 of each protected cell.

13 (m) Each protected cell captive insurance company shall notify the Commissioner in
14 writing within 10 business days of any protected cell that is insolvent or otherwise unable to
15 meet its claim or expense obligations.

16 (n) No participant contract shall take effect without the Commissioner's prior written
17 approval. The addition of each new protected cell, the withdrawal of any participant, or the
18 termination of any existing protected cell shall constitute a change in the plan of operation
19 requiring the Commissioner's prior written approval.

20 (o) The business written by a protected cell captive insurance company, with respect to
21 each protected cell, must be secured by one of the following methods:

22 (1) Fronted by an insurance company licensed under the laws of any state.

23 (2) Reinsured by a reinsurer authorized or approved by this State.

24 (3) Secured by a trust fund in the United States for the benefit of policyholders
25 and claimants, funded by an irrevocable letter of credit, or other arrangement
26 that is acceptable to the Commissioner. The amount of security provided
27 shall be no less than the reserves associated with those liabilities which are
28 neither fronted nor reinsured, including reserves for losses, allocated loss
29 adjustment expenses, incurred but not reported losses, and unearned
30 premiums for business written through the participant's protected cell. The
31 Commissioner may require the protected cell captive insurance company to
32 increase the funding of any security arrangement established under this
33 subdivision. If the form of security is a letter of credit, the letter of credit
34 shall be issued or confirmed by a bank approved by the Commissioner. A
35 trust maintained pursuant to this subdivision shall be established in a form
36 and upon such terms approved by the Commissioner.

37 (p) Notwithstanding this Chapter or other laws of this State, and in addition to
38 G.S. 58-10-525, in the event of an insolvency of a protected cell captive insurance company
39 where the Commissioner determines that one or more protected cells remain solvent, the
40 Commissioner may separate such cells from the protected cell captive insurance company and
41 may allow, on application of the protected cell captive insurance company, for the conversion
42 of such protected cells into one or more new or existing protected cell captive insurance
43 companies, or one or more other captive insurance companies, pursuant to such plan of
44 operation as the Commissioner deems acceptable.

45 **"§ 58-10-515. Participation in a protected cell captive insurance company.**

46 (a) Associations, corporations, limited liability companies, partnerships, trusts, and
47 other business entities may be participants in any protected cell captive insurance company
48 formed or licensed under this Part.

49 (b) A sponsor may be a participant in a protected cell captive insurance company.

50 (c) A participant need not be a shareholder of the protected cell captive insurance
51 company or any affiliate thereof.

(d) A participant shall insure only its own risks through a protected cell captive insurance company.

"§ 58-10-520. Combining assets of protected cells.

Notwithstanding G.S. 58-10-510, the assets of two or more protected cells may be combined for purposes of investment and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes. Protected cell captive insurance companies shall comply with the investment requirements contained in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable; provided that compliance with such investment requirements shall be waived for protected cell captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to G.S. 58-10-445 or to the extent otherwise deemed reasonable and appropriate by the Commissioner. Notwithstanding any other provision of this Chapter, the Commissioner may approve the use of alternative reliable methods of valuation and rating.

"§ 58-10-525. Application of supervision, rehabilitation, and liquidation provisions to protected cell captive insurance companies.

(a) Except as otherwise provided in this Part, Article 30 of this Chapter shall apply to a protected cell captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a protected cell captive insurance company, the Commissioner or receiver shall manage the assets and liabilities of the protected cell captive insurance company pursuant to this Part.

(c) Notwithstanding Article 30 of this Chapter:

(1) No assets of a protected cell shall be used to pay any expenses or claims other than those attributable to such protected cell.

(2) A protected cell captive insurance company's capital and surplus shall at all times be available to pay any expenses of, or claims against, the protected cell captive insurance company.

"Subpart 3. Branch Captive Insurance Companies.

"§ 58-10-530. Establishment of branch captive insurance companies.

(a) A branch captive insurance company may be established in this State, in accordance with this Subpart, to write in this State any insurance or reinsurance of the employee benefit business of its parent and affiliated companies that is subject to the Employee Retirement Income Security Act of 1974, as amended, or any insurance or reinsurance permitted to be written by captive insurance companies pursuant to this Part.

(b) No branch captive insurance company shall do any insurance business in this State unless it maintains the principal place of business for its branch operations in this State.

"§ 58-10-535. Security for payment of branch captive insurance company liabilities.

(a) No branch captive insurance company shall be issued a license by the Commissioner unless it possesses and maintains as security for the payment of liabilities attributable to the branch operations:

(1) An amount equal to the amount set forth in G.S. 58-10-370 as the minimum capital requirement for a pure captive insurance company.

(2) Reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, that the Commissioner may permit a branch captive insurance company to credit against any such reserve requirement any security for loss reserves that the branch captive insurance company may post with a ceding insurer or

that may be posted by a reinsurer with the branch captive insurance company, and in either case if such security remains posted.

(b) Subject to the prior approval of the Commissioner, the amounts required in subsection (a) of this section may be held in the form of:

- (1) A trust formed under a trust agreement and funded by assets acceptable to the Commissioner.
- (2) An irrevocable letter of credit issued or confirmed by a bank approved by the Commissioner.
- (3) With respect to the amounts required in subdivision (a)(1) of this section only, cash on deposit with the Commissioner.
- (4) Any combination of subdivisions (b)(1) through (3) of this section.

"§ 58-10-540. Petition for certificate of authority.

In the case of an alien captive insurance company seeking to become licensed as a branch captive insurance company, the alien captive insurance company shall petition the Commissioner to issue a certificate setting forth the Commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience, and 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.

"§ 58-10-545. Filing of reports and statements.

Prior to March 1 of each year, or with the approval of the Commissioner within 60 days after its fiscal year-end, a branch captive insurance company shall file with the Commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two of its executive officers. If the Commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the Commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

"§ 58-10-550. Examination of a branch captive insurance company.

(a) Any examination of a branch captive insurance company pursuant to G.S. 58-10-430 shall be of branch business and branch operations only so long as the branch captive insurance company files annually with the Commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the Commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

(b) As a condition of licensure, an alien captive insurance company shall grant authority to the Commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

"Subpart 4. Special Purpose Financial Captives.

"§ 58-10-555. Creation of special purpose financial captives.

Special purpose financial captives (SPFCs) are provided by this Subpart exclusively to facilitate the securitization of one or more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. SPFCs are created for the limited purpose of entering into SPFC contracts and insurance securitization transactions and into related agreements to facilitate the accomplishment and execution of those transactions. The creation of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden sources of capital for insurers, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to

1 further the economic development and expand the interest of this State through its captive
2 insurance program.

3 **"§ 58-10-560. Controlling provisions when conflict exists; exemptions.**

4 (a) No provisions of this Chapter, other than those expressly provided in this Part, shall
5 apply to an SPFC. If any conflict occurs in this Part related to an SPFC, the provisions of this
6 Subpart shall control.

7 (b) The Commissioner, by rule, regulation, or order, may exempt an SPFC or its
8 protected cells, on a case-by-case basis, from this Part if the Commissioner determines
9 regulation under this Part to be inappropriate given the nature of the risks to be insured.

10 **"§ 58-10-565. Application requirements.**

11 (a) An SPFC, when permitted by its organizational documents, may apply to the
12 Commissioner for a certificate of authority to transact insurance or reinsurance business as
13 authorized by this Part. An SPFC shall only insure or reinsure the risks of its counterparty.
14 Notwithstanding any other provision of this Part, an SPFC may purchase reinsurance to cede
15 the risks assumed under the SPFC contract as approved by the Commissioner.

16 (b) To transact business in this State, an SPFC shall:

17 (1) Comply with the procedures established in G.S. 58-10-345(c).

18 (2) Obtain from the Commissioner a certificate of authority authorizing it to
19 conduct insurance or reinsurance business, or both, in this State.

20 (3) Hold at least one management meeting each year in this State. For the
21 purposes of this section, management is defined as the board of directors,
22 managing board, or other individual or individuals vested with overall
23 responsibility for the management of the affairs of the SPFC, including the
24 election and appointment of officers or other of those agents to act on behalf
25 of the SPFC.

26 (4) Maintain its principal place of business in this State.

27 (5) Appoint a resident registered agent to accept service of process and to
28 otherwise act on its behalf in this State. If the registered agent, with
29 reasonable diligence, is not found at the registered office of the SPFC, the
30 Commissioner shall be an agent of the SPFC upon whom any process,
31 notice, or demand may be served.

32 (6) Provide such documentation of the insurance securitization as requested by
33 the Commissioner immediately upon closing of the transaction, including:

34 a. An opinion of a duly licensed North Carolina legal counsel with
35 respect to compliance with this Part and any other applicable laws as
36 of the effective date of the transaction.

37 b. A statement under oath of its president and secretary demonstrating
38 its financial condition.

39 (7) Provide a complete set of the documentation of the insurance securitization
40 to the Commissioner immediately following closing of the transaction.

41 (c) A complete SPFC application shall include the following:

42 (1) A certified copy of the SPFC's organizational documents.

43 (2) Evidence of:

44 a. The amount and liquidity of its assets relative to the risks to be
45 assumed.

46 b. The adequacy of the expertise, experience, and character of the
47 person or persons who manage the SPFC.

48 c. The overall soundness of the SPFC's plan of operation.

49 d. Other factors considered relevant by the Commissioner in
50 ascertaining whether the proposed SPFC is able to meet its policy
51 obligations.

- 1 e. The applicant SPFC's financial condition, including the source and
2 form of the minimum capital to be contributed to the SPFC.
- 3 (3) A plan of operation consisting of a description of or statement of intent with
4 respect to the contemplated insurance securitization, the SPFC contract, and
5 related transactions, which shall include:
- 6 a. Draft documentation or, at the discretion of the Commissioner, a
7 written summary of all material agreements that are entered into to
8 effectuate the SPFC contract and, before the effectuation of the SPFC
9 contract, the insurance securitization, to include the names of the
10 counterparty, the nature of the risks being assumed, the proposed use
11 of protected cells, if any, and the maximum amounts, purpose, and
12 nature and the interrelationships of the various transactions required
13 to effectuate the insurance securitization.
- 14 b. The source and form of additional capital to be contributed to the
15 SPFC.
- 16 c. The proposed investment strategy of the SPFC.
- 17 d. A description of the underwriting, reporting, and claims payment
18 methods by which losses covered by the SPFC contract are reported,
19 accounted for, and settled.
- 20 e. A pro forma balance sheet and income statement illustrating various
21 stress case scenarios for the performance of the SPFC under the
22 SPFC contract.
- 23 (4) Biographical affidavits in NAIC format of all of the prospective SPFC's
24 officers and directors, providing the officers' and directors' legal names, any
25 names under which they have or are conducting their affairs, and any other
26 biographical information as the Commissioner may request.
- 27 (5) An affidavit from the applicant SPFC verifying:
- 28 a. The applicant SPFC complies with this Part.
- 29 b. The applicant SPFC operates only pursuant to this Part.
- 30 c. The applicant SPFC's investment strategy reflects and takes into
31 account the liquidity of assets and the reasonable preservation,
32 administration, and asset management of such assets relative to the
33 risks associated with the SPFC contract and the insurance
34 securitization transaction.
- 35 d. The securities proposed to be issued, if any, are valid legal
36 obligations that are either properly registered with the Commissioner
37 or constitute an exempt security or form part of an exempt
38 transaction.
- 39 (6) Any other statements or documents required by the Commissioner to
40 evaluate and complete the licensing of the SPFC.
- 41 (d) In addition to the information required by subsection (c) of this section and by
42 G.S. 58-10-585, when a protected cell is used, an applicant SPFC shall file with the
43 Commissioner:
- 44 (1) A business plan demonstrating how the applicant SPFC accounts for the loss
45 and expense experience of each protected cell at a level of detail found to be
46 sufficient by the Commissioner and how the applicant will report the
47 experience to the Commissioner.
- 48 (2) A statement acknowledging that all records of the SPFC, including records
49 pertaining to any protected cells, must be made available for inspection or
50 examination by the Commissioner.

- 1 (3) All contracts or sample contracts between the SPFC and any counterparty
2 related to each protected cell.
- 3 (4) A description of the expenses allocated to each protected cell.
- 4 (e) Information submitted pursuant to this section shall be and remain confidential, and
5 shall not be made public by the Commissioner or the Commissioner's designee unless
6 disclosure is ordered by a court of competent jurisdiction. In addition, the Commissioner shall
7 have the discretion to disclose such information to a public official having jurisdiction over the
8 regulation of insurance in another state, provided that:
- 9 (1) Such public official shall agree in writing to maintain the confidentiality of
10 such information.
- 11 (2) The laws of the state in which such public official serves require such
12 information to be and to remain confidential.
- 13 (f) G.S. 58-10-430 applies to SPFCs.
- 14 (g) SPFCs are subject to any rules or regulations promulgated pursuant to
15 G.S. 58-10-460.
- 16 (h) The Commissioner may retain legal, financial, and examination services from
17 outside the Department to examine and investigate the application, the cost of which may be
18 charged against the applicant. The Commissioner also may use internal resources to examine
19 and investigate the application based upon an hourly rate for the services performed or the
20 usual and customary fee charged by the financial services industry for similar work subject to a
21 minimum fee of twelve thousand dollars (\$12,000), six thousand dollars (\$6,000) of which is
22 payable upon filing of the application and the remainder upon licensure.
- 23 (i) An SPFC shall be subject to payment of premium taxes as required by
24 G.S. 58-10-455.
- 25 (j) The Commissioner shall grant a certificate of authority authorizing the SPFC to
26 transact insurance or reinsurance business as an SPFC in this State, upon a finding by the
27 Commissioner that:
- 28 (1) The SPFC's proposed plan of operation provides a reasonable and expected
29 successful operation.
- 30 (2) The terms of the SPFC contract and related transactions comply with this
31 Part.
- 32 (3) The proposed plan of operation is not hazardous to any counterparty.
- 33 (4) To the extent required by law or regulation, the Commissioner or an
34 equivalent regulatory authority of the state of domicile of each counterparty
35 has notified the Commissioner in writing or otherwise provided assurance
36 satisfactory to the Commissioner that it has approved or not disapproved the
37 transaction.
- 38 (5) The certificate of authority authorizing the SPFC to transact business is
39 limited only to the insurance or reinsurance activities that the SPFC is
40 authorized to conduct pursuant to this Part.
- 41 (k) In evaluating the expectation of a successful operation, factors the Commissioner
42 shall consider include whether the proposed SPFC and its management are of known good
43 character and reasonably believed not to be affiliated, directly or indirectly, through ownership,
44 control, management, reinsurance transactions, or other insurance or business relations, with a
45 person known to have been involved in the improper manipulation of assets, accounts, or
46 reinsurance.
- 47 (l) To ensure the proposed plan of operation is not hazardous to any counterparty, the
48 Commissioner may require reasonable safeguards in the SPFC's plan of operation where
49 applicable and appropriate in the circumstance, including, without limitation, that certain assets
50 of the SPFC be held in a trust to secure the obligations of the SPFC to a counterparty under an
51 SPFC contract.

(m) A foreign or alien corporation or limited liability company, upon approval of the Commissioner, may become a domestic SPFC after complying with G.S. 58-10-345(c)(1). After such documents are successfully filed, the foreign or alien corporation or limited liability company is entitled to the necessary or appropriate certificates or licenses to transact business as an SPFC in this State and is subject to the authority and jurisdiction of this State. In connection with this redomestication, the Commissioner may waive any requirements for public hearings. It is not necessary for a corporation or limited liability company redomesticating into this State to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section.

"§ 58-10-570. Organization of an SPFC.

(a) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the Commissioner.

(b) The SPFC's organizational documents shall limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this Part.

(c) The SPFC shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this State. Any name adopted by an SPFC shall comply with State law.

(d) An SPFC shall have at least three incorporators or organizers, of whom at least two shall be residents of this State.

(e) At least one of the members of the management of the SPFC shall be a resident of this State.

(f) An SPFC formed pursuant to this Part has the privileges of and is subject to all other requirements of this State's law applicable to its formation, as well as the applicable provisions contained in this Part, provided that this Part controls if a conflict exists in this State's law.

"§ 58-10-575. Minimum capital.

(a) An SPFC shall initially possess and maintain minimum capital of not less than two hundred and fifty thousand dollars (\$250,000). All of the minimum initial capitalization shall be in cash. All other funds of the SPFC in excess of its minimum initial capitalization shall be in the form of cash, cash equivalent, or securities invested as approved by the Commissioner.

(b) Additional capitalization for the SPFC shall be determined, if so required, by the Commissioner after giving due consideration to the SPFC's plan of operation, feasibility study, pro formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the Commissioner.

"§ 58-10-580. Authorized activities.

(a) An SPFC shall only insure the risks of a counterparty.

(b) No SPFC shall issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third-party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the Commissioner.

(c) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this Part. Those activities may include, but are not limited to:

(1) Entering into SPFC contracts.

(2) Issuing SPFC securities in accordance with applicable securities law.

(3) Complying with the terms of such contracts or securities.

(4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions.

(5) Complying with trust indenture, reinsurance, or retrocession, and agreements necessary or incidental to effectuate an insurance securitization in

compliance with this Part or the plan of operation approved by the Commissioner.

(d) An SPFC shall do all of the following:

(1) Discount its reserves at discount rates as approved by the Commissioner.

(2) Maintain reserves that are actuarially sufficient to support the liabilities incurred by an SPFC in reinsuring life insurance policies.

(3) File annually with the Commissioner an actuarial opinion on reserves provided by an approved independent actuary.

"§ 58-10-585. Establishment of protected cell accounts.

(a) This section and G.S. 58-10-590 provide a basis for the creation and use of protected cells by an SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and generally making insurance securitizations more efficient. If a conflict exists between other provisions of this Part and either this section or G.S. 58-10-590, then this section or G.S. 58-10-515 shall control as applicable.

(b) An SPFC may establish and maintain one or more protected cells with prior written approval of the Commissioner and subject to compliance with the applicable provisions of this Part and all of the following conditions:

(1) A protected cell shall be established only for the purpose of insuring or reinsuring risks of one or more SPFC contracts with a counterparty with the intent of facilitating an insurance securitization.

(2) Each protected cell shall be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to the counterparty for the SPFC contract with each cell, and other factors as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the Commissioner.

(3) Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the SPFC, and no SPFC shall be or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account.

(4) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the Commissioner, and no other attribution of assets or liabilities by an SPFC between the SPFC's general account and its protected cell or cells is permitted. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and the related insurance securitization transaction, including any securities issued by the SPFC as part of the insurance securitization, to a particular protected cell. The insurance obligations, assets, and liabilities relating to the SPFC contract and the insurance securitization transaction that are attributed to a particular protected cell shall be consistent with:

a. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell.

b. The performance under an SPFC contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated, at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or company or group company, or any of them, in common control with them, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the agreement.

- (5) No assets of a protected cell shall be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, one or more SPFC contracts may be attributed to a protected cell only if the SPFC contracts are intended to be and ultimately are part of a single securitization transaction.
- (6) No sale, exchange, or other transfer of assets shall be made by the SPFC between or among any of the SPFC's protected cells without the consent of the Commissioner, counterparty, and each protected cell.
- (7) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, no sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a counterparty or parent without the Commissioner's approval and the sale, exchange, transfer, dividend, or distribution shall not be approved if the sale, exchange, transfer, dividend, or distribution would result in a protected cell's insolvency or impairment.
- (8) An SPFC may pay interest or repay principal, or both, and make distributions or repayments with respect to any securities attributed to a particular protected cell from assets or cash flows relating to or emerging from the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with this Part, or as otherwise approved by the Commissioner.

(c) No SPFC contract with or attributable to a protected cell shall take effect without the Commissioner's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the Commissioner's prior written approval. The Commissioner may retain legal, financial, and examination services from outside the Department to examine and investigate the application for a protected cell, the cost of which may be charged against the applicant, or the Commissioner may use internal resources to examine and investigate the application, the cost of which may be charged against the applicant, or both.

(d) An SPFC utilizing protected cells shall possess and maintain minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the Commissioner after giving due consideration of the SPFC's business plan, feasibility study, and pro formas, including the nature of the risks to be insured or reinsured. For purposes of determining the capitalization of each protected cell, an SPFC shall initially capitalize and maintain capitalization in each protected cell in the amount and manner required for an SPFC in G.S. 58-10-575.

(e) The establishment of one or more protected cells alone shall not constitute and shall not be deemed to be a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the carrying out of business by the SPFC for any other fraudulent purpose.

"§ 58-10-590. Protected cell accounts.

(a) All of the following shall apply to a protected cell:

- (1) The creation of a protected cell shall not create, with respect to that protected cell, a legal person separate from the SPFC.
- (2) Notwithstanding subdivision (a)(1) of this subsection, a protected cell shall have its own distinct name or designation that includes the words "protected cell." The SPFC shall transfer all assets attributable to the protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.
- (3) Although a protected cell is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of the court by name as the property would have been if the protected cell were a separate legal person.

(4) The property of an SPFC in a protected cell shall be served with process in its own name in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC.

(5) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan approved by the Commissioner, the SPFC shall close out the protected cell account.

(b) Nothing in this section shall be construed to prohibit an SPFC from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the assets of that protected cell and not from the assets of other protected cells or the assets of the SPFC's general account, unless approved by the Commissioner.

(c) Creditors with respect to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends only to that creditor with respect to that obligation, and the creditor is entitled to have recourse only to the assets of the SPFC's general account.

(d) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC contract counterparty and other creditors of the SPFC that are creditors only with respect to that protected cell and, accordingly, are entitled in conformity with this Part, to have recourse to the protected cell assets attributable to that protected cell. The assets of the protected cell are protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an SPFC contract or related insurance securitization transaction, or is otherwise incurred with respect to a protected cell, then the obligation shall:

(1) Extend only to the protected cell assets attributable to that protected cell, and the person or counterparty, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell.

(2) Not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and the person or counterparty, with respect to that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization held separate and apart from the capitalization of its protected cell or cells must be available at all times to pay expenses of or claims against the SPFC and may not be used to pay expenses or claims attributable to any protected cell.

(e) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate an insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the Commissioner.

(f) An SPFC shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the SPFC and the protected cell assets and protected cell liabilities to each protected cell. An SPFC shall keep protected cell assets and protected cell liabilities:

(1) Separate and separately identifiable from the assets and liabilities of the SPFC's general account.

(2) Attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(g) All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection, and subject to this Part and other applicable laws or regulations, the failure to include this language in the contracts or other documentation shall not be used as the sole basis by creditors, insureds or reinsureds, insurers or reinsurers, or other claimants to circumvent the provisions of this section.

(h) An SPFC with protected cells shall annually file with the Department accounting statements and financial reports required by this Part, which shall:

(1) Detail the financial experience of each protected cell and the SPFC separately.

(2) Provide the combined financial experience of the SPFC and all protected cells.

(i) An SPFC with protected cells shall notify the Commissioner in writing within 10 business days of a protected cell becoming insolvent.

"§ 58-10-595. Issuing securities.

(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved plan of operation, and its organizational documents.

(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) Subject to the approval of the Commissioner, an SPFC may lawfully:

(1) Account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting.

(2) Submit for prior approval of the Commissioner periodic written requests for payments of interest on and repayments of principal of surplus notes. In lieu of approval of periodic written requests for authorization to make payments of interest on and repayments of principal of surplus notes and other debt obligations issued by the SPFC, the Commissioner may approve a formula or plan, which shall be included in the SPFC's plan of operation as amended from time to time, for payment of interest, principal, or both, with respect to such surplus notes and debt obligations.

(d) The Commissioner, without otherwise prejudicing the Commissioner's authority, may approve formulas for an ongoing plan of interest payments or principal repayments, or both, to provide guidance in connection with the Commissioner's ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(e) The obligation to repay principal or interest, or both, on the securities issued by the SPFC must reflect the risk associated with the obligations of the SPFC to the counterparty under the 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

1 leveling timing differences in funding of up-front or ongoing transaction expenses, or
2 managing asset, credit, or interest rate risk of the investments to ensure that the investments are
3 sufficient to assure payment or repayment of the securities, and related interest or principal
4 payments, issued pursuant to an SPFC insurance securitization transaction, or the obligations of
5 the SPFC under the SPFC contract.

6 **"§ 58-10-605. Reinsurance.**

7 (a) An SPFC may reinsure only the risks of a ceding insurer pursuant to a reinsurance
8 contract. No SPFC shall issue a contract of insurance or a contract for assumption of risk or
9 indemnification of loss other than such reinsurance contract.

10 (b) Unless otherwise approved in advance by the Commissioner, no SPFC shall assume
11 or retain exposure to insurance or reinsurance losses for its own account that are not funded by:

12 (1) Proceeds from an insurance securitization, letters of credit, or other assets
13 described in G.S. 58-10-340(22).

14 (2) Premium and other amounts payable by the ceding insurer to the SPFC
15 pursuant to the reinsurance contract.

16 (3) Any return on investment of the items described in subdivisions (1) and (2)
17 of this subsection.

18 (c) The reinsurance contract shall contain all provisions required or approved by the
19 Commissioner, which requirements shall take into account the laws applicable to the ceding
20 insurer regarding the ceding insurer taking credit for the reinsurance provided under such
21 reinsurance contract.

22 (d) An SPFC may cede risks assumed through a reinsurance contract to one or more
23 reinsurers through the purchase of reinsurance, subject to the prior approval of the
24 Commissioner.

25 (e) An SPFC may enter into contracts and conduct other commercial activities related
26 or incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance
27 securitization, and this Part, provided such contracts and activities are included in the SPFC's
28 plan of operation or are otherwise approved in advance by the Commissioner. Such contracts
29 and activities may include the following:

30 (1) Entering into SPFC contracts.

31 (2) Issuing SPFC securities in accordance with applicable securities law.

32 (3) Complying with the terms of such contracts or securities.

33 (4) Entering into trust, guaranteed investment contract, letter of credit, swap,
34 tax, administration, reimbursement, or fiscal agent transactions.

35 (5) Complying with trust indenture, reinsurance, or retrocession and other
36 agreements necessary or incidental to effectuate an insurance securitization
37 in compliance with this Part or the plan of operation approved by the
38 Commissioner.

39 (f) Unless otherwise approved in advance by the Commissioner, a reinsurance contract
40 shall not contain any provision for payment by the SPFC in discharge of its obligations under
41 the reinsurance contract to any person other than the ceding insurer or any receiver of the
42 ceding insurer.

43 (g) An SPFC shall notify the Commissioner immediately of any action by a ceding
44 insurer or any other person to foreclose on or otherwise take possession of collateral provided
45 by the SPFC to secure any obligation of the SPFC.

46 (h) In the SPFC insurance securitization, the contracts or other relating documentation
47 shall contain provisions identifying the SPFC.

48 (i) Unless otherwise approved by the Commissioner, no SPFC shall enter into an SPFC
49 contract with a person that is not licensed or otherwise authorized to transact the business of
50 insurance or reinsurance in at least its state or country of domicile.

51 (j) No SPFC shall:

- (1) Have any direct obligation to the policyholders or reinsureds of the counterparty.
- (2) Perform any of the following activities with anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption:
 - a. Lend or otherwise invest assets.
 - b. Place any assets in custody, trust, or under management.
 - c. Borrow money or receive a loan or advance, other than by issuance of the securities pursuant to an insurance securitization.

"§ 58-10-610. No securities considered to be insurance or reinsurance contracts.

No securities issued by an SPFC pursuant to an insurance securitization shall be considered to be insurance or reinsurance contracts. No investor in these securities or a holder of these securities, by sole means of this investment or holding, shall be considered to be transacting the business of insurance in this State. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this Part shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with an insurance securitization.

"§ 58-10-615. Disposition of assets; investment limitations.

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the reinsurance contract, the insurance securitization, and other related agreements.

(b) In the insurance securitization, the security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the SPFC's obligations to the ceding insurer.

(c) No SPFC shall be subject to any restriction on investments other than the following:

- (1) The Commissioner may limit investments by an SPFC to those categories and amounts of authorized investments delineated in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable and as amended from time to time.
- (2) No SPFC shall make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the Commissioner.
- (3) The Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the SPFC unless the investment is otherwise approved by the Commissioner in writing.

"§ 58-10-620. Dividends.

(a) No SPFC shall declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no extent shall the dividends decrease the capital of the SPFC below two hundred fifty thousand dollars (\$250,000). After giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the Commissioner that the SPFC can meet its obligations. Approval by the Commissioner of an ongoing plan for the payment of dividends or other distribution by an SPFC must be conditioned upon the retention at the time of each payment of capital or surplus equal to or in excess of amounts specified by or determined in accordance with formulas approved for the SPFC by the Commissioner.

1 (b) The dividends may be declared by the management of the SPFC if the dividends do
2 not violate this Part or jeopardize the fulfillment of the obligations of the SPFC or the trustee
3 pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related
4 transaction and other provisions of this Part.

5 **"§ 58-10-625. Changes in plan of operation; filing of audit and statement of operation;**
6 **examinations.**

7 (a) Any material change of the SPFC's plan of operation, whether or not through an
8 SPFC protected cell, shall require prior approval of the Commissioner. The following
9 transactions do not constitute material change for purposes of this section:

10 (1) If initially approved in the plan of operation, securities subsequently issued
11 to continue the securitization activities of the SPFC either during or after
12 expiration, redemption, or satisfaction of all of these, of part or all of the
13 securities issued pursuant to initial insurance securitization transactions.

14 (2) A change and substitution in a counterparty to a swap transaction for an
15 existing insurance securitization as allowed pursuant to this Part if the
16 replacement swap counterparty carries a similar or higher rating to its
17 predecessor with two or more nationally recognized rating agencies.

18 (b) No later than six months after the fiscal year-end of the SPFC, the SPFC shall file
19 with the Commissioner an audit by a certified public accounting firm of the financial
20 statements of the SPFC and the trust accounts.

21 (c) An SPFC shall report using statutory accounting principles, unless the
22 Commissioner requires, approves, or accepts the use of generally accepted accounting
23 principles or other comprehensive basis of accounting. In each case the Commissioner may
24 require, approve, or accept any appropriate or necessary modifications or adaptations to the
25 accounting basis, and may require the report to be supplemented by additional information.

26 (d) Each SPFC shall file by March 1 a statement of operations, using either generally
27 accepted accounting principles or, if approved, accepted, or required by the Commissioner,
28 statutory accounting principles with useful or necessary modifications or adaptations for the
29 type of insurance and kinds of insurers to be reported upon, and as supplemented by additional
30 information required by the Commissioner. The statement of operations shall include a
31 statement of income, a balance sheet, and may include a detailed listing of invested assets,
32 including identification of assets held in trust to secure the obligations of the SPFC under the
33 SPFC contract. The SPFC also may include with the filing risk-based capital calculations and
34 other adjusted capital calculations to assist the Commissioner with evaluating the levels of the
35 surplus of the SPFC for the year ending on December 31 of the previous year. The statements
36 shall be prepared on forms required by the Commissioner. In addition, the Commissioner may
37 require the filing of performance assessments of the SPFC contract.

38 (e) An SPFC shall maintain the SPFC's records in this State unless otherwise approved
39 by the Commissioner and shall make its records available for examination by the
40 Commissioner at any time. The SPFC shall keep its books and records in such manner that its
41 financial condition, affairs, and operations can be ascertained and so that the Commissioner
42 may readily verify its financial statements and determine its compliance with this Part.

43 (f) All original books, records, documents, accounts, and vouchers shall be preserved
44 and kept available in this State for the purpose of examination and until authority to destroy or
45 otherwise dispose of the records is secured from the Commissioner. The original records,
46 however, may be kept and maintained outside this State if, according to a plan adopted by the
47 management of the SPFC and approved by the Commissioner, the SPFC maintains suitable
48 copies instead of the originals. The books or records may be photographed, reproduced on film,
49 or stored and reproduced electronically.

50 **"§ 58-10-630. Cessation of business.**

1 At the cessation of business of an SPFC following termination or cancellation of an SPFC
2 contract and the redemption of any related securities issued in connection with the SPFC
3 contract, the authority granted by the Commissioner expires or, in the case of retiring and
4 surviving protected cells, is modified, the SPFC is no longer authorized to conduct activities
5 unless and until a new or modified certificate of authority is issued pursuant to a new filing
6 under this Part or as agreed by the Commissioner.

7 **"§ 58-10-635. Supervision, rehabilitation, or liquidation of SPFC.**

8 (a) Except as otherwise provided in this section, the terms and conditions set forth in
9 Article 30 of this Chapter pertaining to supervision, rehabilitation, and liquidation of insurers
10 apply in full to SPFCs or each of the SPFC's protected cells, independently, or both, without
11 causing or otherwise effecting a supervision, rehabilitation, or liquidation of the SPFC or
12 another protected cell.

13 (b) Notwithstanding the provisions of Article 30 of this Chapter, and without causing or
14 otherwise effecting a rehabilitation or liquidation of an otherwise solvent protected cell of an
15 SPFC and subject to the provisions of subdivision (g)(5) of this section, the Commissioner may
16 apply by petition to the court for an order authorizing the Commissioner to rehabilitate or
17 liquidate an SPFC domiciled in this State on one or more of the following grounds:

18 (1) There has been embezzlement, wrongful sequestration, dissipation, or
19 diversion of the assets of the SPFC intended to be used to pay amounts owed
20 to the counterparty or the holders of SPFC securities.

21 (2) The SPFC is insolvent and the holders of a majority in outstanding principal
22 amount of each class of SPFC securities request or consent to rehabilitation
23 or liquidation pursuant to the provisions of this Part.

24 (c) Notwithstanding the provisions of Article 30 of this Chapter, the Commissioner may
25 apply by petition to the Court for an order authorizing the Commissioner to rehabilitate or
26 liquidate one or more of an SPFC's protected cells independently, without causing or otherwise
27 effecting a rehabilitation or liquidation of the SPFC generally or another of its protected cells
28 on one or more of the following grounds:

29 (1) There has been embezzlement, wrongful sequestration, dissipation, or
30 diversion of the assets of the SPFC attributable to the affected protected cell
31 or cells intended to be used to pay amounts owed to the counterparty or the
32 holders of SPFC securities of the affected protected cell or cells.

33 (2) The affected protected cell is insolvent and the holders of a majority in
34 outstanding principal amount of each class of SPFC securities attributable to
35 that particular protected cell request or consent to rehabilitation or
36 liquidation pursuant to the provisions of this Part.

37 (d) The Court may not grant relief provided by subdivision (b)(1) or (c)(1) of this
38 section, unless after notice and a hearing, the Commissioner, who shall have the burden of
39 proof, establishes by preponderance of the evidence that relief must be granted. The court's
40 order may be made with respect to one or more protected cells by name, rather than the SPFC
41 generally.

42 (e) Notwithstanding another provision in this Chapter, rules adopted under this Chapter,
43 or another applicable law or regulation, upon any order of rehabilitation or liquidation of a
44 SPFC, or one or more of the SPFC's protected cells, the receiver shall manage the assets and
45 liabilities of the SPFC pursuant to the provisions of this Part. The receiver shall ensure that the
46 assets linked to one protected cell are not applied to the liabilities linked to another protected
47 cell or to the SPFC generally, unless an asset or liability is linked to more than one protected
48 cell, in which case the receiver shall deal with the asset or liability in accordance with the terms
49 of any relevant governing instrument or contract.

50 (f) With respect to amounts recoverable under an SPFC contract, the amount
51 recoverable by the receiver must not be reduced or diminished as a result of the entry of an

order of rehabilitation or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the SPFC insurance securitization.

(g) Notwithstanding the provisions of Article 30 of this Chapter or other laws of this State:

- (1) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of Article 30 of this Chapter, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.
- (2) The commencement of a summary proceeding or other interim proceeding commenced before a delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security, SPFC contract, or the SPFC from taking any action required to make the payment.
- (3) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.
- (4) A receiver of an SPFC may not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.
- (5) The Commissioner may not seek to have an SPFC with protected cells declared insolvent as long as at least one of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle the SPFC's assets in compliance with subsection (e) of this section and other laws of this State.

(h) Subsection (g) of this section does not prohibit the Commissioner from taking any action permitted under Article 30 of this Chapter with respect only to the rehabilitation of an SPFC with protected cell or cells, provided the Commissioner would have had sufficient grounds to seek to declare the SPFC insolvent, subject to and without otherwise affecting the provisions of subdivision (5) of subsection (g) of this section. In this case, with respect to the solvent protected cell or cells, the Commissioner may not prohibit payments made by the SPFC pursuant to the SPFC security, SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(i) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding another provision of this Part or other laws of this State, the assets of an SPFC, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty, pursuant to the provisions of this Part for any purpose including, without limitation, distribution to creditors of the counterparty.

"Subpart 5. Other Provisions.

"§ 58-10-650. Other laws applicable to captive insurance companies.

In addition to the statutes and laws previously referred to in this Part, the following provisions of this Chapter are applicable to all captive insurance companies subject to this Part:

- (1) G.S. 58-2-45. – Orders of Commissioner; when writing required.
- (2) G.S. 58-2-160. – Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
- (3) G.S. 58-2-162. – Embezzlement by insurance agents, brokers, or administrators.

- (4) G.S. 58-2-185. – Record of business kept by companies and agents; Commissioner may inspect.
- (5) G.S. 58-2-190. – Commissioner may require special reports.
- (6) G.S. 58-2-195. – Commissioner may require records, reports, etc., for agencies, agents, and others.
- (7) G.S. 58-2-200. – Books and papers required to be exhibited.
- (8) G.S. 58-5-1. – Deposits; use of master trust.
- (9) G.S. 58-7-50. – Maintenance and removal of records and assets.
- (10) G.S. 58-7-55. – Exceptions to requirements of G.S. 58-7-50."

SECTION 2. G.S. 58-22-15 reads as rewritten:

"§ 58-22-15. Risk retention groups chartered in this State.

(a) ~~A risk retention group seeking to be chartered in this State must be chartered shall, pursuant to the provisions of Part 9 of Article 10 of this Chapter, be chartered and licensed as a to write only liability insurance company under Article 7 of this Chapter pursuant to this Article and, except as provided elsewhere in this Article, must comply with all of the laws and rules applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to the extent such requirements are not a limitation on laws, administrative rules, or requirements of this State. As a chartered and licensed liability insurance company, the group is subject to the taxes imposed in Article 8B of Chapter 105 of the General Statutes.~~

...."

SECTION 3. G.S. 58-28-5 reads as rewritten:

"§ 58-28-5. Transacting business without a license prohibited; exceptions.

(a) Except as otherwise provided in this section, it is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in G.S. 58-28-13 without a license issued by the Commissioner. This section does not apply to the following acts or transactions:

- (10) An activity in this State by or on the sole behalf of a captive insurer licensed and subject to regulation in another jurisdiction other than this State that insures solely the risks of the company's parent and affiliated companies, companies or the risks of a controlled unaffiliated business.

...."

SECTION 4. G.S. 58-47-95 reads as rewritten:

"§ 58-47-95. Excess insurance and reinsurance.

...

(b) Any excess insurance policy or reinsurance contract under this section shall be issued by a licensed insurance company, a licensed captive insurance company, an approved surplus lines insurance company, or an accredited reinsurer, and shall:

- (1) Provide for at least 30 days' written notice of cancellation by certified mail, return receipt requested, to the group and to the Commissioner.
- (2) Be renewable automatically at its expiration, except upon 30 days' written notice of nonrenewal by certified mail, return receipt requested, to the group and to the Commissioner.

...."

SECTION 5. G.S. 97-90 reads as rewritten:

"§ 97-190. Excess insurance.

...

(b) An excess insurance policy required by this section shall be issued by either an insurance company licensed in this ~~State~~ State, a captive insurance company licensed in this State, or an eligible surplus lines insurer as defined in G.S. 58-21-10 and shall:

- (1) Provide for at least 30 days' written notice of cancellation by registered or certified mail, return receipt requested, to the self-insurer and to the Commissioner.
- (2) Be renewable automatically at its expiration, except upon 30 days' written notice of nonrenewal by certified mail, return receipt requested, to the self-insurer and to the Commissioner.

...."

SECTION 6.(a) G.S. 105-228.3 reads as rewritten:

"§ 105-228.3. Definitions.

The following definitions apply in this Article:

- (1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58 of the General Statutes, regulating hospital, medical, and dental service corporations.
- (1a) Captive insurance company. – Defined in G.S. 58-10-340.
- (2) Insurer. – An insurer as defined in G.S. 58-1-5 or a group of employers who have pooled their liabilities pursuant to G.S. 97-93 of the Workers' Compensation Act.
- (3) Self-insurer. – An employer that carries its own risk pursuant to G.S. 97-93 of the Workers' Compensation Act."

SECTION 6.(b) Article 8B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-228.4A. Tax on captive insurance companies.

(a) Tax Levied. – A tax is levied in this section on a captive insurance company doing business in this State. In the case of a branch captive insurance company, the tax levied in this section applies only to the branch business of the company. Two or more captive insurance companies under common ownership and control are taxed under this section as a single captive insurance company.

(b) Other Taxes. – A captive insurance company that is subject to the tax levied by this section is not subject to any of the following:

- (1) Franchise taxes imposed by Article 3 of this Chapter.
- (2) Income taxes imposed by Article 4 of this Chapter.
- (3) Local privilege taxes or local taxes computed on the basis of gross premiums.
- (4) The insurance regulatory charge imposed by G.S. 58-6-25.

(c) Administration. – The definitions in G.S. 58-10-340 apply in this section. A company subject to this section must file with the Secretary a full and accurate report of the premiums contracted for or collected on policies or contracts of insurance written by the company during the preceding calendar year. In the case of a multiyear policy or contract, the premiums must be prorated among the years covered by the policy or contract. The report is due on or before March 1. The taxes imposed by this section are due to the Secretary with the report.

(d) Tax on Assumed Reinsurance Premiums. – The tax to be applied to assumed reinsurance premiums is computed at the percentages provided in the table below. The tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis under subsection (e) of this section. The tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of one insurer by another insurer if the two insurers are under common control and the Commissioner of Insurance verifies both of the following: (i) the transaction between the insurers is part of a plan to discontinue the operations of one of the insurers, and (ii) the intent of the insurers is to renew or maintain business with the captive insurance company.

<u>Premiums Collected</u>	<u>Rate of Tax</u>
Up to \$20,000,000	.225%
\$20,000,000 to \$40,000,000	.150%
\$40,000,000 to \$60,000,000	.050%
\$60,000,000 and over	.025%

(e) Tax on Direct Premiums. – The tax to be applied to direct premiums is computed at the percentages provided in the table below. In determining the amount of premiums subject to tax under this subsection, the taxpayer may deduct the amounts paid to policyholders as return premiums. Return premiums include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

<u>Premiums Collected</u>	<u>Rate of Tax</u>
Up to \$20,000,000	0.4%
\$20,000,000 and more	0.3%

(f) Total Tax Liability. – The aggregate amount of tax payable under this section by a protected cell captive insurance company with more than 10 cells may not be less than ten thousand dollars (\$10,000) and may not exceed the lesser of (i) one hundred thousand dollars (\$100,000) plus five thousand dollars (\$5,000) multiplied by the number of cells over 10 and (ii) two hundred thousand dollars (\$200,000). The aggregate amount of tax payable under this section for any other captive insurance company may not be less than five thousand dollars (\$5,000) and may not exceed one hundred thousand dollars (\$100,000).

If a captive insurance company is a special purpose financial captive and if the special purpose financial captive is under common ownership and control with one or more other captive insurance companies, the following provisions apply to the consolidated group of companies that are taxed as a single captive insurance company pursuant to subsection (a) of this section:

- (1) The amount of premium tax payable under this section is allocated to each member of the consolidated group in the same proportion that the premium allocable to the member bears to the total premium of all members.
- (2) The aggregate amount of tax payable under this section by the consolidated group is equal to the greater of the following:
 - a. The sum of the premium tax allocated to the members.
 - b. Five thousand dollars (\$5,000).
- (3) If the total premium tax allocated to all members of a consolidated group that are special purpose financial captives exceeds one hundred thousand dollars (\$100,000), then the total premium tax allocated to those members is one hundred thousand dollars (\$100,000).
- (4) If the total premium tax allocated to all members of the consolidated group that are not special purpose financial captives exceeds one hundred thousand dollars (\$100,000), then the total premium tax allocated to those members is one hundred thousand dollars (\$100,000)."

SECTION 6.(c) G.S. 105-228.5(g) reads as rewritten:

"(g) Exemptions. – This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members. This section does not apply to a captive insurance company taxed under G.S. 105-228.4A."

SECTION 7. G.S. 58-6-25 reads as rewritten:

"§ 58-6-25. Insurance regulatory charge.

(a) Charge Levied. – There is levied on each insurance company, other than a captive insurance company, an annual charge for the purposes stated in subsection (d) of this section. The charge levied in this section is in addition to all other fees and taxes. The percentage rate of the charge is established pursuant to subsection (b) of this section and is

1 applied to the company's premium tax liability for the taxable year. In determining an insurance
2 company's premium tax liability for a taxable year, the following shall be disregarded:

3

4 (d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State treasury,
5 under the control of the Office of State Budget and Management. The proceeds of the charge
6 levied in this section and all fees collected under Articles 69 through 71 of this Chapter and
7 under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund.
8 The Fund shall be placed in an interest-bearing account and any interest or other income
9 derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only
10 pursuant to appropriation by the General Assembly and in accordance with the line item budget
11 enacted by the General Assembly. The Fund is subject to the provisions of the Executive
12 Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund.
13 All money credited to the Fund shall be used to reimburse the General Fund for the following:

14

- 15 (1) Money appropriated to the Department of Insurance to pay its expenses
16 incurred in regulating the insurance ~~industry~~ industry, including the captive
insurance industry, and other industries in this State.

17

- 18 (10) Money appropriated to the Department of Insurance to pay its expenses
19 incurred in promoting North Carolina's captive insurance industry.

20

(e) Definitions. – The following definitions apply in this section:

21

- (1) Repealed by Session Laws 2003-284, s. 43.2, effective for taxable years
22 beginning on or after January 1, 2004.

23

- (1a) Captive insurance company. – Defined in G.S. 105-228.3.

24

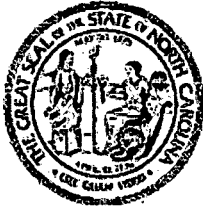
- (2) Insurance company. – A company that pays the gross premiums tax levied in
25 G.S. 105-228.5 and G.S. 105-228.8.

26

- (3) Insurer. – Defined in G.S. 105-228.3."

27

28 **SECTION 8.** Nothing in this act shall be construed to obligate the General
29 Assembly to appropriate funds to implement the provisions of this act. This act becomes
30 effective July 1, 2013, if funds are appropriated for the 2013-2015 fiscal biennium to provide
31 the Department with regulatory staff and resources to license and regulate captive insurance
32 companies. If no funds are appropriated, then this act shall not become effective until July 1 of
a year in which the General Assembly appropriates funds to implement it.



HOUSE BILL 473: NC Captive Insurance Act

2013-2014 General Assembly

Committee:	Senate Insurance	Date:	June 5, 2013
Introduced by:	Reps. Dockham, Howard, Johnson, Tine	Prepared by:	Peter Ledford
Analysis of:	PCS to Fifth Edition		Committee Counsel
	H473-PCS10418-TPx-43		

SUMMARY: *House Bill 473 would allow captive insurance companies in the State and establish procedures for the organization and regulation of their operations.*

The PCS makes minor technical changes.

[As introduced, this bill was identical to S476, as introduced by Sens. Meredith, Apodaca, which is currently in House Commerce and Job Development.]

BACKGROUND: Captive insurance companies are insurance companies that are established solely to insure the risks of a specific company or group. The captive insurance company is a wholly owned subsidiary of a parent company or an industry association. The parent company pays premiums to the captive insurance company, who covers any claims against the parent company. Unlike traditional insurance, when the captive insurance company profits, the parent company does as well. Captive insurance companies are typically used to self-insure against predictable risks, such as workers' compensation and malpractice. Captive insurance companies can purchase reinsurance to cover any claims that may exceed the premiums collected.

CURRENT LAW: Captive insurance companies are not allowed under current North Carolina law.

BILL ANALYSIS: House Bill 473 would establish the procedures for the organization and regulation of the operations of captive insurance companies within the State.

Section 1 would create a new Part in Article 10 of Chapter 58, the North Carolina Captive Insurance Act.

Subpart 1. General Provisions.

G.S. 58-10-335 would establish the title of the Act, the North Carolina Captive Insurance Act, and declare the purpose of the Act, to establish the procedures for the organization and regulation of the operations of captive insurance companies within this State and thereby promote the general welfare of the people of this State.

G.S. 58-10-340 would provide definitions for the terms used throughout the Act. Key terms include:

- Association captive insurance company. – A company that insures the risks of the members of an association and their affiliated companies.
- Branch captive insurance company. – An insurance company licensed pursuant to the laws of a foreign country that is licensed by the Commissioner of Insurance (Commissioner) to transact in this State. A branch captive insurance company is a pure captive insurance company with respect to operations in this State.
- Industrial insured captive insurance company. – A company that insures the risks of a group of companies having shared governance and that may insure the risks of the affiliated companies and controlled unaffiliated businesses.

O. Walker Reagan
Director



Research Division
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- Protected cell. – Either (a) a separate account established by a protected cell captive insurance company in which an identified pool of assets and liabilities are segregated and insulated from the remainder of the protected cell captive insurance company's assets and liabilities, or (b) a separate account established by a special purpose financial captive (SPFC) for one SPFC contract and the accompanying insurance securitization.
- Protected cell captive insurance company. – A captive insurance company where (a) the minimum capital and surplus are provided by one or more sponsors, (b) the company is formed or licensed under the Act, (c) the company insures the risks of separate participants through participant contracts, and (d) the company funds its liability to each participant through one or more protected cells.
- Pure captive insurance company. – A company that insures risks of its parent company and affiliated or controlled unaffiliated businesses.
- Risk retention group. – A captive insurance company organized under the laws of the State pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901, et seq., as a stock or mutual corporation or as a reciprocal or other limited liability entity.
- Special Purpose Financial Captive (SPFC). – A captive insurance company that has received a certificate of authority from the Commissioner for the limited purposes provided in Subpart 4.

G.S. 58-10-345 would set forth the requirements for an applicant to obtain a license to form a captive insurance company in the State and the types of insurance a captive insurance company is permitted to issue.

G.S. 58-10-350 would authorize the Commissioner to hire consultants and other professionals to expedite and complete application reviews, examinations, and other regulatory activities. The contracts to hire consultants and other professionals would not be subject to G.S. 114-2.3, G.S. 147-17, and Articles 3, 3C, and 8 of Chapter 143 and their associated rules.

G.S. 58-10-355 would authorize the Commissioner to perform an organizational examination before issuing a license to an applicant.

G.S. 58-10-360 would require a captive insurance company, before being issued a license, to report to the Commissioner the name and address of the manager retained to manage the captive insurance company, and also requires the Commissioner to approve the manager.

G.S. 58-10-365 would prohibit a captive insurance company from adopting a name that is the same as, deceptively similar to, or likely to be confused with any business name currently registered in the State.

G.S. 58-10-370 would specify the capital and surplus requirements for the different types of captive insurance companies. The requirements are as follows:

- For a pure captive insurance company, not less than \$250,000
- For an association captive insurance company, not less than \$500,000
- For an industrial insured captive insurance company, not less than \$500,000
- For a risk retention group, not less than \$1,000,000
- For a protected cell captive insurance company, not less than \$250,000

G.S. 58-10-375 would require a captive insurance company receive prior approval from the Commissioner before paying a dividend or other distribution out of capital and surplus.

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G.S. 58-10-380 would set forth the requirements for the formation of a captive insurance company.

G.S. 58-10-385 would require a captive insurance company report to the Commissioner within 30 days after a change in its executive officers or directors. It would also prohibit directors, officers, and employees from receiving any personal benefit as a result of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the captive insurance company.

G.S. 58-10-390 would require a captive insurance company adopt a conflict of interest policy for officers, directors, and key employees.

G.S. 58-10-395 would require a captive insurance company receive prior approval from the Commissioner before any material change in the company's previously filed business plan. Any immaterial change in other information included in the application does not require prior approval, but must be filed within 60 days.

G.S. 58-10-400 would prohibit any person in or from the State from acting as a managing general agent, producer, or reinsurance intermediary for a captive insurance company without authorization from the Commissioner.

G.S. 58-10-405 would require a captive insurance company file an annual report with the Commissioner and sets forth the reporting requirements.

G.S. 58-10-420 would require a captive insurance company have an audit prepared annually by an independent certified public accountant and the audit be filed with the Commissioner. The annual audit would be required to include a statement of actuarial opinion prepared by a qualified actuary evaluating the captive insurance company's loss and loss expense reserves.

G.S. 58-10-422 would set forth the specific requirements of the annual audit required by G.S. 58-10-420.

G.S. 58-10-425 would set forth the specific requirements of the deposit required from a captive insurance company by G.S. 58-10-345(c)(6), including increasing, releasing, and receiving interest on the deposit.

G.S. 58-10-430 would authorize the Commissioner to conduct an examination of a captive insurance company whenever the Commissioner determines it is prudent. Any examination conducted pursuant to this section is to be paid by the captive insurance company being examined.

G.S. 58-10-435 would set forth the reasons that the license of a captive insurance company may be suspended or revoked.

G.S. 58-10-440 would set forth the investment requirements for association captive insurance companies and risk retention groups. All other forms of captive insurance companies are not subject to restrictions on allowable investments, unless the Commissioner believes that an investment may threaten the solvency or liquidity of a captive insurance company.

G.S. 58-10-445 would authorize captive insurance companies to provide reinsurance and to take credit for the reinsurance of risks ceded to the captive insurance company if certain criteria are met.

G.S. 58-10-450 would set forth that a captive insurance company is not required to join a rating association. It would also prohibit a captive insurance company from joining or contributing financially to any plan, pool, association, or guaranty or insolvency fund in the State or from receiving any benefit from any such plan, pool, association, or guaranty or insolvency fund.

G.S. 58-10-455 would direct that captive insurance companies are taxed in accordance with Article 8B of Chapter 105 of the General Statutes.

G.S. 58-10-460 would authorize the Commissioner to adopt rules to carry out the provisions of the Act.

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G.S. 58-10-465 would provide that no part of Chapter 58 applies to the Act, unless specifically set forth in the Act.

G.S. 58-10-470 would authorize the Commissioner to adopt rules to establish standards to ensure that a parent or its affiliate company, or an industrial insured or its affiliate company, is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company or an industrial insured captive insurance company.

G.S. 58-10-475 would set forth the terms and conditions for supervision, rehabilitation, and liquidation for captive insurance companies.

G.S. 58-10-480 would authorize any specified public body to expend public funds for the purchase of capital stock in a captive insurance company or to provide guaranty capital in a mutual captive insurance company, provided that at the time of the expenditure adequate insurance markets in the United States are not available to cover the risks, hazards, and liabilities of the public body, or that the needed coverage is only available at excessive rates or with unreasonable deductibles.

G.S. 58-10-485 would set forth the penalties for violating any provision of the Act or any rule or regulation authorized by the Act.

G.S. 58-10-495 would provide that a captive insurance company that reinsures life insurance policies must maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring life insurance policies.

Subpart 2. Protected Cell Captive Insurance Companies.

G.S. 58-10-500 would set forth additional provisions for the formation of a protected cell captive insurance company.

G.S. 58-10-505 would set forth additional filing requirements for an applicant forming a protected cell captive insurance company.

G.S. 58-10-510 would set forth the conditions under which a protected cell captive insurance company is allowed to establish and maintain protected cells.

G.S. 58-10-515 would set forth the requirements for participation in a protected cell captive insurance company.

G.S. 58-10-520 would authorize the assets of two or more protected cells to be combined for the purposes of investment, provided that the assets can still be segregated for accounting and other purposes.

G.S. 58-10-525 would set forth the terms and conditions for supervision, rehabilitation, and liquidation for protected cell captive insurance companies, including that the assets of one protected cell may not be used to pay any expenses or claims of any other protected cell.

Subpart 3. Branch Captive Insurance Companies.

G.S. 58-10-530 would authorize the formation of branch captive insurance companies in the State, provided that no branch captive insurance company may do any business in the State unless it maintains the principal place of business for its branch operations in the State.

G.S. 58-10-535 would require that, before a license is issued to a branch captive insurance company, security for the payment of liabilities attributable to the branch operations totaling an amount for a minimum capital requirement and an amount for reserves must be held in the form of a trust account, an irrevocable letter of credit, or cash on deposit with the Commissioner, for the minimum capital requirement only, or a combination of each.

G.S. 58-10-540 would require an alien captive insurance company seeking to become licensed as a branch captive insurance company petition the Commissioner to issue a certificate setting forth the Commissioner's finding that the licensing and maintenance of the branch operations will promote the general good of the State.

G.S. 58-10-545 would set forth the annual reporting requirements for a branch captive insurance company.

G.S. 58-10-550 would provide that any examination of a branch captive insurance company conducted by the Commissioner shall be of the branch business and branch operations only.

Subpart 4. Special Purpose Financial Captives.

G.S. 58-10-555 would provide for the creation of special purpose financial captives (SPFCs) exclusively to facilitate the securitization of one or more risks, as a means of accessing alternative sources of capital and achieving the benefit of securitization.

G.S. 58-10-560 would set forth the controlling provisions for a SPFC.

G.S. 58-10-565 would set forth the application requirements for a SPFC.

G.S. 58-10-570 would set forth the requirements for the organization of a SPFC.

G.S. 58-10-575 would require a SPFC maintain a minimum capital and surplus of \$250,000, which must be in the form of cash. Additional capitalization may be determined, if so required, by the Commissioner.

G.S. 58-10-580 would set forth the authorized activities of a SPFC.

G.S. 58-10-585 and G.S. 58-10-590 would provide a basis for the creation and use of protected cells by a SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and general making insurance securitizations more efficient.

G.S. 58-10-595 would authorize a SPFC to issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its plan of operation, and its organizational documents.

G.S. 58-10-600 would authorize a SPFC to enter into asset management agreements.

G.S. 58-10-605 would authorize a SPFC to reinsure only the risks of a ceding insurer pursuant to a reinsurance contract. It would set forth the conditions that must be met in order to assume or retain exposure to insurance or reinsurance losses for its own account.

G.S. 58-10-610 would provide that no securities issued by a SPFC pursuant to an insurance securitization are to be considered an insurance or reinsurance contract.

G.S. 58-10-615 would set forth the disposition of assets of a SPFC and the investment limitations of a SPFC.

G.S. 58-10-620 would prohibit a SPFC from declaring or paying dividends in any form to its owners, other than in accordance with the securitization agreements.

G.S. 58-10-625 would require prior approval from the Commissioner before there is any change in a SPFC's plan of operations. It would also set forth the requirements for an annual audit and for the filing of a statement of operations.

G.S. 58-10-630 would set forth that the authority of the Commissioner expires at the cessation of business of a SPFC following termination or cancellation of a SPFC contract and the redemption of any related securities issued in connection with the SPFC contract.

G.S. 58-10-635 would set forth the terms and conditions for supervision, rehabilitation, and liquidation for SPFCs.

Subpart 5. Other Provisions.

G.S. 58-10-650 would set out what other sections in Chapter 58 are applicable to captive insurance companies under the Act.

Section 2 would require risk retention groups be chartered and licensed to write only liability insurance in accordance with the North Carolina Captive Insurance Act.

Section 3 would amend the exceptions under which a business may transact insurance business in the State without a license to include captive insurance companies licensed and subject to regulation in another state that solely insure the risks of the captive's parent company, affiliated companies, or controlled unaffiliated businesses.

Section 4 would allow a business is licensed to self-insure for workers' compensation under Article 47 of Chapter 58 to maintain excess insurance or reinsurance through a captive insurance company licensed in the State.

Section 5 would allow a business is licensed to self-insure for workers' compensation under Article 5 of Chapter 97 to maintain excess insurance or reinsurance through a captive insurance company licensed in the State.

Section 6 would set out the tax provisions that apply to captive insurance companies. Captive insurance companies would not be subject to the premium taxes charged to other insurance companies, but instead would be taxed at the following rates:

- For reinsurance premiums:
 - 0.225% on the first \$20,000,000
 - 0.150% on the next \$20,000,000
 - 0.050% on the next \$20,000,000
 - 0.025% on each dollar thereafter
- For direct premiums:
 - 0.4% on the first \$20,000,000
 - 0.3% on each dollar thereafter
- For protected cell captive insurance companies with more than 10 cells, the annual minimum aggregate tax would be \$10,000 and the maximum would be the lesser of (i) \$100,000, plus \$5,000 multiplied by the number of cells over 10 and (ii) \$200,000.
- For all other captive insurance companies, the annual minimum aggregate tax would be \$5,000 and the maximum would be \$100,000, for all captive insurance companies except for protected cell captive insurance companies.

Section 7 would exempt captive insurance companies from the insurance regulatory charge levied on most insurance companies in the State. It would also authorize the Department of Insurance to use proceeds of the Insurance Regulatory Fund to pay expenses incurred in regulating the captive insurance industry and to pay expenses incurred in promoting the State's captive insurance industry.

EFFECTIVE DATE: This act becomes effective July 1, 2013, if funds are appropriated for the 2013-2015 fiscal biennium to provide the Department with regulatory staff and resources to license and

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regulate captive insurance companies. If no funds are appropriated, then this act becomes effective on July 1 of a year in which the General Assembly appropriates funds to implement it.

**The North Carolina Department of Insurance substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

H

4

HOUSE BILL 649

Committee Substitute Favorable 5/1/13

Third Edition Engrossed 5/2/13

Committee Substitute #2 Favorable 5/16/13

Short Title: Small Group Health Ins. Technical Changes.

(Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE SMALL EMPLOYER GROUP HEALTH COVERAGE REFORM ACT TO MITIGATE THE EFFECTS OF THE FEDERAL AFFORDABLE CARE ACT ON NORTH CAROLINA'S SMALL BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. Corrections to small group act. – No small employer carrier shall be required to issue the basic or standard health benefit plan as described in G.S. 58-50-125(a). Any basic or standard health benefit plans described in G.S. 58-50-125(a) that are not "grandfathered health plans," as that term is used under Section 1251 of the Affordable Care Act, P.L. 11-148, as amended, shall be terminated on the next anniversary date on or after January 1, 2014, and the small employer carrier shall offer the employer replacement coverage from available small group health benefit plans pursuant to and in accordance with all applicable State and federal laws and regulations. The termination shall be preceded by a 90-day notice to the Commissioner, the employer policyholder, the participants, and the beneficiaries. If the plan is issued to a self-employed individual, as defined in G.S. 58-50-110(21a), then the small employer carrier shall offer (i) replacement coverage from available individual health benefit plans or (ii) if the small employer carrier does not offer individual health benefit plans in this State, then individual conversion coverage pursuant to G.S. 58-53-45.

SECTION 2.(a) The following are repealed: G.S. 58-50-126, 58-50-127, 58-50-135, 58-50-155, and 58-50-156.

SECTION 2.(b) G.S. 58-50-110 reads as rewritten:

"§ 58-50-110. Definitions.

As used in this Act:

(10a) "Grandfathered health plan" means a health benefit plan providing coverage considered grandfathered health coverage described in 45 C.F.R. §147.140(a).

(22) "Small employer" means any individual actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar quarter, employed no more than 50 eligible employees, the majority of whom are employed within this State, and is not formed primarily for



* H 6 4 9 - V - 4 *

purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this State, shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, the provisions of this Act that apply to a small employer shall continue to apply until the plan anniversary following the date the small employer no longer meets the requirements of this definition. For purposes of this Act, subsection, the term small employer includes self-employed individuals. Effective January 1, 2014, this definition shall apply only to grandfathered group health plans subject to this Act.

(22a) "Small employer" means, in connection with a non-grandfathered group health plan with respect to a calendar year and a plan year, an employer that employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and that employs at least one employee on the first day of the plan year. The number of employees shall be determined using the method set forth in section 4980H(c)(2) of the Internal Revenue Code.

...."

SECTION 2.(c) G.S. 58-50-115 reads as rewritten:

"§ 58-50-115. Health benefit plans subject to Act.

(a) A health benefit plan is subject to this Act if it provides health benefits for small employers ~~or self-employed individuals~~ and if any of the following conditions are met:

- (1) Any part of the premiums or benefits is paid by a small employer or any covered individual is reimbursed, whether through wage or adjustments or otherwise, by a small employer for any portion of the premium;
- (2) The health benefit plan is treated by the employer ~~or any of the covered self-employed individuals~~ as part of a plan or program for the purpose of sections 106, 125, or 162 of the United States Internal Revenue Code; or
- (3) The small employer ~~or self-employed individuals~~ have permitted payroll deductions for the eligible enrollees for the health benefit plans.

(b) Repealed by Session Laws 1993, c. 529, s. 3.5."

SECTION 2.(d) G.S. 58-50-125(d) reads as rewritten:

~~"(d) As a condition of transacting business as a small employer carrier in this State, the carrier shall either offer small employers at least one basic and one standard health care plan or the alternative coverages provided in G.S. 58-50-126. Every small employer that elects to be covered under such a plan and agrees to make the required premium payments and to satisfy the other provisions of the plan shall be issued such a plan by the small employer carrier. The premium payment requirements used in connection with basic and standard health care plans may address the potential credit risk of small employers that elect coverage in accordance with this subsection by means of payment security provisions that are reasonably related to the risk and are uniformly applied.~~

If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all eligible employees of a small employer and their dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group except in the case of late enrollees as provided in G.S. 58-50-130(a)(4b). A small employer carrier shall not modify any health benefit plan with respect to a small employer, any eligible employee, or dependent through riders, endorsements, or otherwise, in order to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health

benefit plan. In the case of an eligible employee or dependent of an eligible employee who, before the effective date of the plan, was excluded from coverage or denied coverage by a small employer carrier in the process of providing a health benefit plan to an eligible small employer, the small employer carrier shall provide an opportunity for the eligible employee or dependent of an eligible employee to enroll in the health benefit plan currently held by the small employer."

SECTION 2.(e) Effective January 1, 2015, subsections (a) and (a1) of G.S. 58-50-125 are repealed.

SECTION 2.(f) G.S. 58-50-130 reads as rewritten:

"§ 58-50-130. Required health care plan provisions.

...
(b) For all small employer health benefit plans that are grandfathered health benefit plans and that are subject to this section, the premium rates are subject to all of the following provisions:

...."

SECTION 2.(g) G.S. 58-50-130 is amended by adding the following new subsections to read:

"(b1) For all small employer health benefit plans that are not grandfathered health benefit plans and that are subject to this section, the premium rates are subject to all of the following provisions:

(1) A small employer carrier shall use a method to develop premiums for small employer group health benefit plans that are not grandfathered health plans which spreads financial risk across a large population and allows adjustments for only the following factors:

- a. Age, except that the rate shall not vary by more than three to one for adults.
- b. Whether the plan or coverage covers individual or family.
- c. Geographic rating areas.
- d. Tobacco use, except that the rate shall not vary by more than one and one-half to one due to tobacco use.

With respect to family coverage under a health benefit plan, the rating variations for age and tobacco use shall be applied based on the portion of premium that is attributable to each family member covered under the plan.

(2) A small employer carrier shall consider the claims experience of all enrollees in all small employer group health benefit plans that are not grandfathered health plans offered by the insurer in the small employer group market in this State to be members of a single risk pool. No small employer carrier shall consider claims experience of grandfathered health plans in developing the single risk pool.

...
(i) A small employer carrier shall not modify the premium rate charged to a small group non-grandfathered health benefit plan or a small employer group member, including changes in rates related to the increasing age of a group member, for 12 months from the initial issue date or renewal date."

SECTION 3.(a) G.S. 58-50-110(22a) is repealed.

SECTION 3.(b) G.S. 58-50-110 reads as rewritten:

"§ 58-50-110. Definitions.

As used in this Act:

...

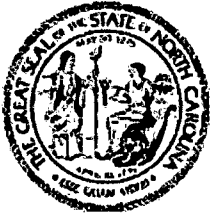
(22b) "Small employer" means, in connection with a non-grandfathered group health plan with respect to a calendar year and a plan year, an employer who

1 employed an average of at least one but not more than 100 employees on
2 business days during the preceding calendar year and who employs at least
3 one employee on the first day of the plan year. The number of employees
4 shall be determined using the method set forth in section 4980H(c)(2) of the
5 Internal Revenue Code.

6 "

7 **SECTION 4.** The Department of Insurance shall adopt rules to implement this Act.

8 **SECTION 5.** Section 1 of this Act is effective when it becomes law. Except as
9 otherwise provided in that section, Section 2 of this Act becomes effective January 1, 2014, and
10 applies to all insurance contracts and policies issued, renewed, or amended on or after that date.
11 Section 3 of this Act becomes effective January 1, 2016. The remainder of this act is effective
12 when it becomes law.



HOUSE BILL 649: Small Group Health Ins. Technical Changes

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Reps. Collins, Dockham
Analysis of: Fourth Edition

Date: May 31, 2013
Prepared by: Amy Jo Johnson
Committee Counsel

SUMMARY: *House Bill 649 makes changes to the Small Employer Group Health Coverage Reform Act as a response to various changes to the insurance market that will take effect due to federal regulations.*

BACKGROUND:

The Affordable Care Act (ACA) contains various changes to the insurance market that affect small group market plans. Namely, beginning in 2014, new rating rules will apply to non-grandfathered plans offered in small group markets. Section 2701 of the ACA eliminates all rating factors other than age, geography, tobacco use, and whether the coverage is for an individual or family. With regards to age, the rate is not allowed to vary by more than 3 to 1. For tobacco use, the rate is not allowed to vary by more than 1.5 to 1.

The ACA also affects the definition of which employers may purchase on the small group market. Section 1304 of the ACA contains the following definition for small employer: "The term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year." States are given the option to define a small employer as one that employed an average of at least 1 but not more than 50 employees as noted above until January 1, 2016.

CURRENT LAW:

The Small Employer Group Health Insurance Reform Act (Small Group Act), Part 5 of Article 50 of Chapter 58 of the General Statutes, governs health insurance coverage offered on the small group market. Currently, small employer carriers must offer at least one basic and one standard health care plan (G.S. 58-50-125) or alternative coverage (G.S. 58-50-126). A small employer carrier must make the coverage available to all eligible employees. Rating is based on an adjusted-community rating method, which allows for rate variation based upon age, gender, number of family members covered, geographic area or industry. (G.S. 58-50-130(b)). Premium rates cannot be used until approved by the Commissioner of Insurance (Commissioner), who must approve or disapprove the rate within 60 of receipt of the filing. (G.S. 58-50-131).

BILL ANALYSIS:

Section 1 of House Bill 649 makes change to the Small Group Act. No small employer carrier will be required to issue the basic or standard health benefit plans and any such plans that are not grandfathered health plans, as defined by ACA, will be terminated on the next anniversary date on or after January 1, 2014. The small employer carrier must offer the employer replacement coverage and issue a 90-day notice of termination to the Commissioner, the employer policyholder, the participants, and the beneficiaries. If the plan is issued to a self-employed individual, the carrier must issue individual



House Bill 649

Page 2

replacement coverage or, if the carrier does not offer individual health benefit plans, must issue individual conversion coverage pursuant to G.S. 58-53-45.

Section 2 makes several changes in conformance with the ACA, including the repeal of statutes relating to the basic and standard small group plans. The definition of small employer is changed with regards to those plans that are non-grandfathered plans to mean "an employer that employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and that employees at least one employee on the first day of the plan year." **Section 3** of the bill changes the number 50 to the number 100 in this definition to take effect January 1, 2016, in conformance with the ACA.

Section 2 also addresses rating factors to be utilized by non-grandfathered small group health benefit plans, in accordance with the ACA. For non-grandfathered plans, the following factors may be used:

- Age, except that the rate may not vary by more than 3 to 1 for adults.
- Whether the plan or coverage covers individual or family.
- Geographic rating areas.
- Tobacco use, except that the rate may not vary by more than 1.5 to 1.

With respect to family coverage, the rating variations for age and tobacco use must be applied based on the portion of premium that is attributable to each family member covered under the plan.

Section 4 directs the Department of Insurance to adopt rules to implement act.

EFFECTIVE DATE: Section 1 is effective when it becomes law. Except as otherwise provided in that section, Section 2 becomes effective January 1, 2014, and applies to all insurance contracts and policies issued, renewed, or amended on or after that date. Section 3 becomes effective January 1, 2016. The remainder of this act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 649

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H649-ATK-73 [v.4]

Page 1 of 2

Comm. Sub. [YES]
Amends Title [YES]
Fourth Edition

Date _____, 2013

Senator

Andrea Walters

moves to amend the bill on page 1, line 5, by rewriting the line to read:

"BUSINESSES AND TO INCREASE STOP LOSS INSURANCE OPTIONS FOR SMALL EMPLOYERS.";

And to further amend the bill on page 3, lines 44-45, by inserting the following between the lines:

SECTION 3. G.S 58-58-130(a) reads as rewritten:

"(a) Health benefit plans covering small employers are subject to the following provisions:

...

- (5) ~~Notwithstanding any other provision of this Chapter, no small employer carrier, insurer, subsidiary of an insurer, or controlled individual of an insurance holding company shall act as an administrator or claims paying agent, as opposed to an insurer, on behalf of small groups which, if they purchased insurance, would be subject to this section. No small employer carrier, insurer, subsidiary of an insurer, or controlled individual of an insurance holding company shall provide stop loss, catastrophic, or reinsurance coverage to small employers that does not comply with the underwriting, rating, and other applicable standards in this Act. An insurer shall not issue a stop loss health insurance policy health insurance policy to any person, firm, corporation, partnership, or association defined as a small employer that does any of the following:~~
- a. Provides direct coverage of health expenses payable to an individual.
- b. Has an annual attachment point for claims incurred per individual that is lower than twenty thousand dollars (\$20,000).



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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 649

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H649-ATK-73 [v.4]

Page 2 of 2

c. Has an annual aggregate attachment point lower than the greater of one of the following:

1. One hundred and twenty percent (120%) of expected claims.

2. Twenty thousand dollars (\$20,000).

Nothing in this subsection prohibits an insurer from providing additional incentives to small employers with benefits promoting a medical home or benefits that provide health care screenings, are focused on outcomes and key performance indicators, or are reimbursed on an outcomes basis rather than a fee-for-service basis.

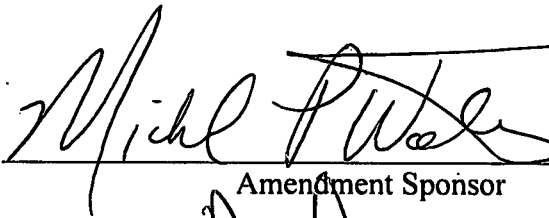
...";

And to further amend the bill by renumbering the remaining sections accordingly;

And to further amend the bill on page 4, lines 11-12, by rewriting the line to read:

"Section 3 of this Act becomes effective October 1, 2013 applies to all stop loss insurance contracts and policies issued, renewed, or amended on or after that date. Section 4 of this Act becomes effective January 1, 2016. The remainder of this act is effective when it becomes law."

SIGNED


Amendment Sponsor

SIGNED


Committee Chair in Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 649

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H649-ATK-77 [v.2]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
Fourth Edition

Date _____, 2013

Senator Appalachian Walters

1 moves to amend the bill on page 4, line 7, by inserting the following sentence at the end of that
2 line:

3
4 "The Department of Insurance shall adopt rules providing for the oversight, monitoring of and
5 reporting by insurers and third party administrators who administer health benefit plans with
6 stop loss coverage pursuant to this Act."
7
8
9

SIGNED

Michael Walters
Amendment Sponsor

SIGNED

[Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

1

HOUSE BILL 650

Short Title: Guaranty Association Act Amendments.

(Public)

Sponsors: Representative Collins (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Insurance.

April 10, 2013

A BILL TO BE ENTITLED
AN ACT TO MAKE CLARIFYING, CONFORMING, AND OTHER CHANGES TO THE
NORTH CAROLINA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-62-21 reads as rewritten:

"§ 58-62-21. Coverage and limitations.

...

(c) This Article does not provide coverage for:

- (1) Any part of a policy not guaranteed by the insurer, or under which the risk is borne by the policyholder;
- (2) Any policy or contract of reinsurance, unless assumption certificates have been issued;
- (3) Any part of a policy to the extent that the rate of interest on which it is based-based, or the interest rate, crediting rate, or similar factor determined by the use of an index or other external reference stated in the policy or contract and employed in calculating returns or changes in value:
 - a. Averaged over the period of four years before the date on which the Association becomes obligated with respect to the policy, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for a lesser period if the policy was issued less than four years before the Association became obligated; and
 - b. On and after the date on which the Association becomes obligated with respect to the policy, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;
- (4) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:
 - a. A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;
 - b. A minimum premium group insurance plan;



- 1 c. A stop-loss group insurance plan; or
2 d. An administrative services only contract;
- 3 (5) Any part of a policy to the extent that it provides dividends or
4 experience-rating credits, or provides that any fees or allowances be paid to
5 any person, including the policyholder, in connection with the service to or
6 administration of the policy;
- 7 (6) Any policy issued in this State by a member insurer at a time when it was
8 not licensed to issue the policy in this State;
- 9 (7) Any unallocated annuity contract issued to an employee benefit plan
10 protected under the federal Pension Benefit Guaranty Corporation; and
- 11 (8) Any part of any unallocated annuity contract that is not issued to or in
12 connection with a specific employee, union, or association of natural persons
13 benefit plan or a government lottery.
- 14 (9) A policy or contract providing any hospital, medical, prescription drug, or
15 other health care benefits pursuant to Part C or Part D of Subchapter XVIII,
16 Chapter 7 of Title 42 of the United States Code (commonly known as
17 Medicare Parts C & D) or any regulations issued pursuant thereto.
- 18 (10) A portion of a policy or contract to the extent it provides for interest or other
19 changes in value to be determined by the use of an index or other external
20 reference stated in the policy or contract, but which have not been credited to
21 the policy or contract or as to which the policy or contract owner's rights are
22 subject to forfeiture, as of the date the member insurer becomes an impaired
23 or insolvent insurer under this Act, whichever is earlier. If a policy's or
24 contract's interest or changes in value are credited less frequently than
25 annually, then for purposes of determining the values that have been credited
26 and are not subject to forfeiture under this subdivision, the interest or change
27 in value determined by using the procedures defined in the policy or contract
28 will be credited as if the contractual date of crediting interest or changing
29 values was the date of impairment or insolvency, whichever is earlier, and
30 will not be subject to forfeiture.
- 31 (d) The benefits for which the Association is liable do not, in any event, exceed the
32 lesser of:
- 33 (1) The contractual obligations for which the insurer is liable or would have
34 been liable if it were not a delinquent insurer; or
- 35 (2) With respect to any one individual, regardless of the number of policies,
36 three hundred thousand dollars (\$300,000) for all benefits, including cash
37 values; or
- 38 (2a) With respect to health insurance benefits for any one individual, regardless
39 of the number of policies:
- 40 a. Three hundred thousand dollars (\$300,000) for coverages not defined
41 as basic hospital, medical, and surgical insurance or major medical
42 insurance as defined in this Chapter and regulations adopted pursuant
43 to this Chapter, including disability insurance and long-term care
44 insurance; or
- 45 b. Five hundred thousand dollars (\$500,000) for basic hospital, medical,
46 and surgical insurance or major medical insurance as defined in this
47 Chapter and regulations adopted pursuant to this Chapter;
- 48 (3) With respect to each individual participating in a governmental retirement
49 plan established under section 401, 403(b), or 457 of the Internal Revenue
50 Code covered by an unallocated annuity contract, or the beneficiaries of each
51 individual if deceased, in the aggregate, three hundred thousand dollars

- 1 (\$300,000) in present value annuity benefits, including net cash surrender
2 and net cash withdrawal values; or
- 3 (4) With respect to any one contract holder covered by any unallocated annuity
4 contract not included in subdivision (3) of this subsection, five million
5 dollars (\$5,000,000) in benefits, regardless of the number of such contracts
6 held by that contract holder; or
- 7 (5) With respect to any one payee (or beneficiaries of one payee if the payee is
8 deceased) of a structured settlement annuity, one million dollars
9 (\$1,000,000) for all benefits, including cash values.
- 10 (6) However, in no event shall the Association be obligated to cover more than
11 (i) an aggregate of three hundred thousand dollars (\$300,000) in benefits
12 with respect to any one individual under subdivisions (2) and (3) and
13 sub-subdivision (2a)a. except with respect to benefits for basic hospital,
14 medical, and surgical and major medical insurance under sub-subdivision
15 (2a)b. of this subsection, in which case the aggregate liability of the
16 Association shall not exceed five hundred thousand dollars (\$500,000) with
17 respect to any one individual."

18 **SECTION 2. G.S. 58-62-36 reads as rewritten:**

19 **"§ 58-62-36. Powers and duties of the Association.**

20 (a) If a member insurer is an impaired domestic insurer, the Association may, subject to
21 any conditions imposed by the Association and approved by the Commissioner that do not
22 impair the contractual obligations of the impaired insurer and that are, except in cases of
23 court-ordered conservation or rehabilitation, also approved by the impaired insurer:

- 24 (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or
25 reinsured, any or all of the policies of the impaired insurer;
- 26 (2) Provide such monies, pledges, notes, guarantees, or other means as are
27 proper to carry out subdivision (1) of this subsection and assure payment of
28 the contractual obligations of the impaired insurer pending action under
29 subdivision (1) of this subsection; or
- 30 (3) Lend money to the impaired insurer.

31 (b) ~~If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and~~
32 ~~the insurer is not paying claims in a timely manner, then subject to the preconditions specified~~
33 ~~in subsection (c) of this section, the Association shall, in its discretion, either:~~

- 34 (1) ~~Take any of the actions specified in subsection (a) of this section, subject to~~
35 ~~the conditions therein; or~~
- 36 (2) ~~Provide substitute benefits in lieu of the contractual obligations of the~~
37 ~~impaired insurer solely for health claims, periodic annuity benefit payments,~~
38 ~~death benefits, supplemental benefits, and cash withdrawals for~~
39 ~~policyowners who petition therefor under claims of emergency or hardship~~
40 ~~in accordance with standards proposed by the Association and approved by~~
41 ~~the Commissioner.~~

42 (c) ~~The Association is subject to the requirements of subsection (b) of this section only~~
43 ~~if:~~

- 44 (1) ~~The laws of the impaired insurer's state of domicile provide that until all~~
45 ~~payments of or on account of the impaired insurer's contractual obligations~~
46 ~~by all guaranty associations, along with all expenses thereof and interest on~~
47 ~~all the payments and expenses, have been repaid to the guaranty associations~~
48 ~~or a plan of repayment by the impaired insurer has been approved by the~~
49 ~~guaranty associations, the delinquency proceeding shall not be dismissed;~~
50 ~~neither the impaired insurer nor its assets may be returned to the control of~~
51 ~~its shareholders or private management; and the impaired insurer may not~~

1 ~~solicit or accept new business or have any suspended or revoked license~~
2 ~~restored; and~~

3 (2) ~~The impaired insurer is a domestic insurer that has been placed under an~~
4 ~~order of rehabilitation by a court of competent jurisdiction in this State; or~~
5 ~~the impaired insurer is a foreign or alien insurer that has been prohibited~~
6 ~~from soliciting or accepting new business in this State, its license has been~~
7 ~~suspended or revoked in this State, and a petition for rehabilitation or~~
8 ~~liquidation has been filed in a court of competent jurisdiction in its state of~~
9 ~~domicile by that state's insurance regulator.~~

10 (d) If a member insurer is an insolvent insurer, the Association shall, in its discretion,
11 either:

- 12 (1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed, or
13 reinsured, the policies of the insolvent insurer; or
14 (2) Assure payment of the contractual obligations of the insolvent insurer; and
15 (3) Provide such monies, pledges, guarantees, or other means as are reasonably
16 necessary to discharge those duties; or
17 (4) With respect only to life and health insurance policies, provide benefits and
18 coverages in accordance with subsection (e) of this section.

19 (d1) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring
20 policies or contracts under subsections (a) and (d) of this section, the Association may, subject
21 to approval of the receivership court, issue substitute coverage for a policy or contract that
22 provides an interest rate, crediting rate, or similar factor determined by use of an index or other
23 external reference stated in the policy or contract employed in calculating returns or changes in
24 value by issuing an alternative policy or contract in accordance with the following provisions:

- 25 (1) In lieu of the index or other external reference provided for in the original
26 policy or contract, the alternative policy or contract provides for (i) a fixed
27 interest rate, (ii) payment of dividends with minimum guarantees, or (iii) a
28 different method for calculating interest or changes in value;
29 (2) There is no requirement for evidence of insurability, waiting period, or other
30 exclusion that would not have applied under the replaced policy or contract;
31 and
32 (3) The alternative policy or contract is substantially similar to the replaced
33 policy or contract in all other material terms.

34"

35 SECTION 3. G.S. 58-62-41 reads as rewritten:

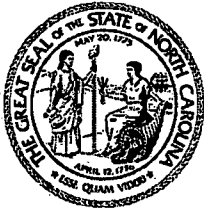
36 "§ 58-62-41. Assessments.

37 ...

38 (c) The amount of any Class A assessment shall be determined by the Board and may
39 or may not be prorated. If prorated, the Board may provide that it be credited against future
40 Class B assessments. If not prorated, the assessment shall not exceed ~~one hundred fifty dollars~~
41 ~~(\$150.00)~~ five hundred dollars (\$500.00) per member insurer in any one calendar year. The
42 amount of any Class B assessment shall be allocated for assessment purposes among the
43 accounts pursuant to an allocation formula, which may be based on the premiums or reserves of
44 the delinquent insurer or any other standard considered by the Board in its sole discretion to be
45 fair and reasonable under the circumstances.

46"

47 SECTION 4. This act becomes effective July 1, 2013.



HOUSE BILL 650: Guaranty Association Act Amendments

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Rep. Collins
Analysis of: First Edition

Date: June 4, 2013
Prepared by: Tim Hovis
Committee Counsel

SUMMARY: *House Bill 650 makes changes to the statutes governing the Life and Health Insurance Guaranty Association including the following: (1) clarifies law governing Association coverage for policies with interest rates determined by an index or other external reference; (2) excludes coverage for Medicare Parts C and D policies; (3) establishes aggregate coverage limits for health insurance benefits; (4) deletes obsolete language related to foreign, domestic, and alien insurers; (5) authorizes the use of substitute fixed rate policies when providing coverage for a policy with indexed interest rates; and (6) increases the maximum Class A assessment per member company.*

Changes in the bill are based on model legislation adopted by the American Council of Life Insurers and the National Association of Insurance Commissioners.

BACKGROUND: The Life and Health Insurance Guaranty Association Act, codified as Article 62 of Chapter 58 of the General Statutes, provides protection to eligible persons against defaults by issuers of certain life and health insurance policies and annuity contracts, by creating an association of insurers responsible for fulfilling the obligations of the defaulting insurer, subject to certain limitations.

BILL ANALYSIS: Section 1 of House Bill 650 amends G.S. 58-62-21, *Coverage and limitations*, to clarify that the Moody's rate adjustment provision in current law applies to policies with indexed interest rates. Under current law, the Association does not provide coverage to the extent the rate of interest in a policy exceeds an adjustment as provided in this section based on the Moody's Corporate Bond Yield Average.

This section also excludes from Association coverage the following:

- A policy or contract providing hospital, medical, prescription drug, or other health care benefits under Medicare Part C or Part D.
- That portion of a policy or contract that provides for indexed interest or value which has not been credited to the policy or contract, or which is subject to forfeiture, as of the date of insolvency or impairment.

Finally, Section 1 provides that the Association's aggregate limit for coverage for health insurance benefits for any one individual, regardless of the number of policies, shall not exceed \$500,000 for basic hospital, medical, and surgical insurance or major medical and \$300,000 for all other health insurance benefits.

Section 2 amends G.S. 58-62-36, *Powers and duties of the Association*, to delete language pertaining to domestic, foreign, or alien insurers. According to the Association, this language is no longer necessary.

Section 2 also adds a new subsection (d1) to allow, with approval of the receivership court, the use of substitute policies providing for fixed interest rates when guaranteeing coverage for a policy or contract using an indexed rate. The substitute policy can have no requirement for evidence of insurability,



House Bill 650

Page 2

waiting period or other exclusion not included in the original policy and the substitute policy must be substantially similar to the replaced policy or contract in all other material terms.

Section 3 of House Bill 650 increases the amount of maximum Class A assessments from \$150 to \$500. Article 62 provides for two type of member assessments: (1) Class A assessments are made for the purpose of meeting administrative and legal costs of the Association and for the examination of insurers for delinquency; and (2) Class B assessments are made to carry out the duties of the Association with regard to delinquent insurers.

EFFECTIVE DATE: House Bill 650 becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 248
Health Care Committee Substitute Adopted 4/17/13
Third Edition Engrossed 5/14/13

Short Title: Choice of Hearing Aid Specialist.

(Public)

Sponsors:

Referred to:

March 12, 2013

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT PATIENTS HAVE THE RIGHT TO CHOOSE THEIR
HEARING AID SPECIALIST UNDER THEIR HEALTH BENEFIT PLANS, TO
AUTHORIZE THE NORTH CAROLINA STATE HEARING AID DEALERS AND
FITTERS BOARD TO INCREASE CERTAIN FEES, AND TO MAKE TECHNICAL
CHANGES TO THE STATUTE ON CHOOSING SERVICES OF PROVIDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-30 reads as rewritten:

"§ 58-50-30. Right to choose services of ~~optometrist, podiatrist, licensed clinical social
worker, certified substance abuse professional, licensed professional counselor,
dentist, chiropractor, physical therapist, psychologist, pharmacist, certified
fee-based practicing pastoral counselor, advanced practice nurse, licensed
marriage and family therapist, or physician assistant.~~certain providers.

(a) Repealed by Session Laws 2001-297, s. 1, effective January 1, 2001.

(a1) Whenever any health benefit plan, subscriber contract, or policy of insurance issued
by a health maintenance organization, hospital or medical service corporation, or insurer
governed by Articles 1 through 67 of this Chapter provides for coverage for, payment of, or
reimbursement for any service rendered in connection with a condition or complaint that is
within the scope of practice of ~~a duly licensed optometrist, a duly licensed podiatrist, a duly
licensed dentist, a duly licensed chiropractor, a duly licensed physical therapist, a duly licensed
clinical social worker, a duly certified substance abuse professional, a duly licensed
professional counselor, a duly licensed psychologist, a duly licensed pharmacist, a duly
certified fee-based practicing pastoral counselor, a duly licensed physician assistant, a duly
licensed marriage and family therapist, or an advanced practice registered nurse, a provider
listed in subsection (b) of this section,~~ the insured or other persons entitled to benefits under the
policy shall be entitled to coverage of, payment of, or reimbursement for the services, whether
the services be performed by a duly licensed physician, or a provider listed in ~~this
subsection,~~ subsection (b) of this section, notwithstanding any provision contained in the plan or
policy limiting access to the providers. The policyholder, insured, or beneficiary shall have the
right to choose the provider of services notwithstanding any provision to the contrary in any
other statute, subject to the utilization review, referral, and prior approval requirements of the
plan that apply to all providers for that service; provided that:

(1) In the case of plans that require the use of network providers as a condition
of obtaining benefits under the plan or policy, the policyholder, insured, or
beneficiary must choose a provider of the services within the network; and



(2) In the case of plans that require the use of network providers as a condition of obtaining a higher level of benefits under the plan or policy, the policyholder, insured, or beneficiary must choose a provider of the services within the network in order to obtain the higher level of benefits.

(a2) Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for certification of disability that is within the scope of practice of ~~a duly licensed physician, a duly licensed physician assistant, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly licensed physical therapist, a duly licensed clinical social worker, a duly certified substance abuse professional, a duly licensed professional counselor, a duly licensed psychologist, a duly certified fee-based practicing pastoral counselor, a duly licensed marriage and family therapist, or an advanced practice registered nurse,~~ a provider listed in subsection (b) of this section, the insured or other persons entitled to benefits under the policy shall be entitled to payment of or reimbursement for the disability whether the disability be certified by a duly licensed physician, or a provider listed in ~~this subsection,~~ subsection (b) of this section, notwithstanding any provisions contained in the policy. The policyholder, insured, or beneficiary shall have the right to choose the provider of the services notwithstanding any provision to the contrary in any other statute; provided that for plans that require the use of network providers either as a condition of obtaining benefits under the plan or policy or to access a higher level of benefits under the plan or policy, the policyholder, insured, or beneficiary must choose a provider of the services within the network, subject to the requirements of the plan or policy.

(a3) Whenever any health benefit plan, subscriber contract, or policy of insurance issued by a health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting within the scope of the chiropractor's practice as defined in G.S. 90-151 unless a comparable limitation is imposed on the medically necessary treatment if performed or authorized by any other duly licensed physician.

(b) ~~For the purposes of this section,~~ This section applies to the following provider types:

(1) A duly licensed optometrist.

(2) A duly licensed dentist.

(3) A duly licensed podiatrist.

(4) A duly licensed chiropractor.

(5) An advanced practice registered nurse, subject to subsection (d) of this section. For purposes of this section, an "advanced practice registered nurse" means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife.

(6) ~~a "duly licensed psychologist" is a~~ A psychologist who is one of the following:

(1)a. ~~Licensed~~ A licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board; ~~or Board.~~

(2)b. ~~Licensed~~ A licensed psychological associate who holds permanent licensure.

(c)(7) ~~For the purposes of this section, a "duly licensed clinical social worker" is a "licensed clinical social worker"~~ A licensed clinical social worker, as defined in G.S. 90B-3(2) and G.S. 90B-3(2) who is licensed by the North Carolina Social Work Certification and Licensure Board pursuant to Chapter 90B of the General Statutes.

(8) A duly licensed pharmacist, subject to the provisions of subsection (e) of this section.

~~(e1)(9) For purposes of this section, a "duly certified fee-based practicing pastoral counselor" shall be defined only to include~~ A fee-based practicing pastoral counselor certified by the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors pursuant to Article 26 of Chapter 90 of the General Statutes.

~~(e2)(10) For purposes of this section, a "duly certified substance abuse professional" is a person~~ A substance abuse professional certified by the North Carolina Substance Abuse Professional Certification Board pursuant to Article 5C of Chapter 90 of the General Statutes.

(11) A physician assistant, as defined by G.S. 90-18.1 and subject to subsection (f) of this section.

~~(e3)(12) For purposes of this section, a "duly licensed professional counselor" is a person~~ A professional counselor licensed by the North Carolina Board of Licensed Professional Counselors pursuant to Article 24 of Chapter 90 of the General Statutes.

~~(e4)(13) For purposes of this section, a "duly licensed marriage and family therapist" is a person~~ A marriage and family therapist licensed by the North Carolina Marriage and Family Therapy Licensure Board pursuant to Article 18C of Chapter 90 of the General Statutes.

~~(e5)(14) For purposes of this section, a "duly licensed physical therapist" is a person~~ A physical therapist licensed by the North Carolina Board of Physical Therapy Examiners pursuant to Article 18B of Chapter 90 of the General Statutes.

(15) A hearing aid specialist licensed by the North Carolina State Hearing Aid Dealers and Fitters Board under Chapter 93D of the General Statutes to engage in fitting or selling hearing aids. For purposes of this subdivision, the term "fitting and selling hearing aids" has the same meaning as defined in G.S. 93D-1.

(d) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

- (1) The service performed is within the nurse's lawful scope of practice;
- (2) The policy currently provides benefits for identical services performed by other licensed health care providers;
- (3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;
- (4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and
- (5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision, unless these plan requirements apply to all providers for that service.

~~For purposes of this section, an "advanced practice registered nurse" means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife.~~

(e) Payment or reimbursement is required by this section for a service performed by a duly licensed pharmacist only when:

- (1) The service performed is within the lawful scope of practice of the pharmacist;
- (2) The service performed is not initial counseling services required under State or federal law or regulation of the North Carolina Board of Pharmacy;
- (3) The policy currently provides reimbursement for identical services performed by other licensed health care providers; and
- (4) The service is identified as a separate service that is performed by other licensed health care providers and is reimbursed by identical payment methods.

Nothing in this subsection authorizes payment to more than one provider for the same service.

(f) Payment or reimbursement is required by this section for a service performed by a duly licensed physician assistant only when:

- (1) The service performed is within the lawful scope of practice of the physician assistant in accordance with rules adopted by the North Carolina Medical Board pursuant to G.S. 90-18.1;
- (2) The policy currently provides reimbursement for identical services performed by other licensed health care providers; and
- (3) The reimbursement is made to the physician, clinic, agency, or institution employing the physician assistant.

Nothing in this subsection is intended to authorize payment to more than one provider for the same service. ~~For the purposes of this section, a "duly licensed physician assistant" is a physician assistant as defined by G.S. 90-18.1.~~

(g) A health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter shall not exclude from participation in its provider network or from eligibility to provide particular covered services under the plan or policy any duly licensed physician or provider listed in subsection ~~(a1)~~(b) of this section, acting within the scope of the provider's license or certification under North Carolina law, solely on the basis of the provider's license or certification. Any health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter that offers coverage through a network plan may condition participation in the network on satisfying written participation criteria, including credentialing, quality, and accessibility criteria. The participation criteria shall be developed and applied in a like manner consistent with the licensure and scope of practice for each type of provider. Any health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter that excludes a provider listed in subsection ~~(a1)~~(b) of this section from participation in its network or from eligibility to provide particular covered services under the plan or policy shall provide the affected listed provider with a written explanation of the basis for its decision. A health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter shall not exclude from participation in its provider network a provider listed in subsection ~~(a1)~~(b) of this section acting within the scope of the provider's license or certification under North Carolina law solely on the basis that the provider lacks hospital privileges, unless use of hospital services by the provider on behalf of a policy holder, insured, or beneficiary reasonably could be expected.

(h) Nothing in this section shall be construed as expanding the scope of practice of any duly licensed physician or provider listed in subsection ~~(a1)~~(b) of this section."

SECTION 2. G.S. 93D-5 reads as rewritten:

"§ 93D-5. Requirements for registration; examinations; licenses.

(a) No person shall begin the fitting and selling of hearing aids in this State unless the person has been issued a license by the Board or is an apprentice working under the supervision

1 of a Registered Sponsor. Except as hereinafter provided, each applicant for a license shall pay a
2 fee set by the Board, not to exceed ~~two hundred fifty dollars (\$250.00)~~, five hundred dollars
3 (\$500.00), which fee may be prorated by the Board, and shall show to the satisfaction of the
4 Board that the applicant:

- 5 (1) Is a person of good moral character.
- 6 (2) Is 18 years of age or older.
- 7 (3) Has an education equivalent to a four-year course in an accredited high
8 school.

9"

10 **SECTION 3.** G.S. 135-48.51(12) reads as rewritten:

11 "(12) G.S. 58-50-30, Right to choose services of ~~optometrist, podiatrist, licensed~~
12 ~~clinical social worker, certified substance abuse professional, licensed~~
13 ~~professional counselor, dentist, physical therapist, chiropractor,~~
14 ~~psychologist, pharmacist, certified fee-based practicing pastoral counselor,~~
15 ~~advanced practice nurse, licensed marriage and family therapist, or physician~~
16 ~~assistant certain providers."~~

17 **SECTION 4.** This act becomes effective October 1, 2013.



SENATE BILL 248: Choice of Hearing Aid Specialist

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Sen. Hartsell
Analysis of: Third Edition

Date: June 4, 2013
Prepared by: Amy Jo Johnson
Committee Counsel

SUMMARY: *Senate Bill 656 adds hearing aid specialists to the list of providers from which an individual has the right to choose the provider of services under a health benefit plan. The bill also increases the amount of the fee for licensure that the Board may assess from \$250 to \$500.*

CURRENT LAW:

G.S. 58-50-30 lists the various types of health care providers from which a policy holder, insured, or beneficiary ("insured") may choose under a health benefit plan, subscriber contract, or policy of insurance ("policy"). The services must be of a nature that the policy provides coverage of, or payment or reimbursement. If the policy requires use of network providers, the insured must choose a provider of services within the network. If the policy requires use of network providers as a condition of obtaining a higher level of benefits, the insured must choose a provider of services within network in order to obtain the higher level of benefits.

G.S. 58-50-30 also lists the provider types who are able to complete a certification of disability. When a policy provides for a certification of disability that is within the scope of the enumerated providers, the insured is entitled to benefits as long as one of the listed provider types has completed the certification of disability, notwithstanding any provisions contained in the policy. The insured has the right to choose the provider of services.

The provisions of G.S. 58-50-30 are applicable to the State Health Plan pursuant to G.S. 135-48.51.

BILL ANALYSIS:

Section 1 amends G.S. 58-50-30 to add "a duly licensed hearing aid specialist" to the list of health care providers from which an insured may choose under a policy. A "duly licensed hearing aid specialist" is defined as a person licensed by the North Carolina State Hearing Aid Dealers and Fitters Board (Board) pursuant to Chapter 93D of the General Statutes to engage in fitting or selling hearing aids. The remainder of Section 1 contains technical changes meant increase the readability of the statute by reorganizing the list of providers accounted for under G.S. 58-50-30.

Section 2 changes the amount of the fee for licensure the (Board) may assess. Currently, the Board may assess a fee not to exceed \$250. Under Senate Bill 248, that amount is increased to \$500.

Section 3 makes a conforming change to G.S. 135-48.51(12), the statute applying G.S. 58-50-30 to the State Health Plan.

EFFECTIVE DATE: The act becomes effective October 1, 2013.



VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

June 5, 2013

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

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<i>Will Crutcher</i>	<i>MWC</i>
<i>Mary Beth</i>	<i>AARP - NC</i>
<i>Andrea Bushnell</i>	<i>Reactors</i>
<i>JOE LANIER</i>	<i>NELSON MULLINS</i>
<i>T. Friedman</i>	<i>N. DST</i>
<i>Paula G. Hopper</i>	<i>INCHCP</i>
<i>David Stollen</i>	<i>STATE Farm</i>
<i>Sara Fender</i>	<i>IFNC</i>
<i>Jennifer Mahan</i>	<i>ASNC</i>
<i>[Signature]</i>	<i>[Signature]</i>

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Senate **INSURANCE** Committee

June 5, 2013

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Patricia Chis	P. Chis & Assoc.
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Jake Cella	De Chant
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Jan Andrews	NC DOT
Rebecca Shigley	NC DOT
Bryan Hecke	NC DOT
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Senate **INSURANCE** Committee

June 5, 2013

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Autism Speaks

John BURRESS

AUTISM SOCIETY

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Autism Speaks

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Adam Shlain

DHHS

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WCSR

VISITOR REGISTRATION SHEET

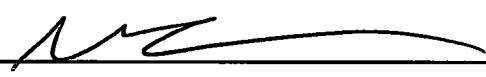
Senate **INSURANCE** Committee

June 5, 2013

Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
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INSURANCE SENATE COMMITTEE

2013 - 2014



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BILL INDEX
For the Senate Committee on
INSURANCE
2013-14 Session

Bill

Date In Committee

HB 267 Limit Tolling on Existing Interstates

Wednesday, June 25, 2014

HB 1145 Registration Required for Mopeds

Wednesday, June 25, 2014

**Senate Committee on Insurance
Wednesday, June 25, 2014, 10:00 AM
1027/1128 Legislative Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO. SHORT TITLE

HB 1145 Registration Required for
Mopeds.

HB 267 Limit Tolling on Existing
Interstates.

SPONSOR

Representative Shepard
Representative R.
Brown

Representative Millis
Representative Collins
Representative Torbett
Representative Floyd
Representative Wray

Senate Committee on Insurance
Wednesday, June 25, 2014 at 10:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Insurance met at 10:00 AM on June 25, 2014 in Room 1027/1128 of the Legislative Building. Ten members were present.

Senator Tom Apodaca, Chair, presided.

Alexus Johnson Mobley from Raleigh, Weston Davis from Raleigh, Tas'zhane Jabbaar from Fayetteville, Aubrey Greene from Crossnore, Gabby Hubert from Washan, and Troy Garrett from Asheboro served as pages.

Senator Apodaca chose to take up the bills in the order reflected below.

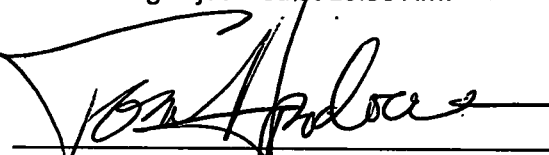
HB 267 Captive Insurance Amendments

Senator Apodaca suggested that the rules be suspended and to allow the proposed committee substitute (PCS) to be considered. Due to an error the PCS could not be sent out the day before. The committee agreed to allow it. Senator Meredith moved to adopt PCS for discussion and it carried. Representative Collins was introduced to explain the bill. Rose Vaughn Williams the Legislative Council for the Department of Insurance was present to assist with questions from the members. Debra M. Walker the Director of Captive Insurance also participated. Senator Davis moved unfavorable to the bill – favorable to the PCS and it carried. Senator Apodaca will manage the bill during session.

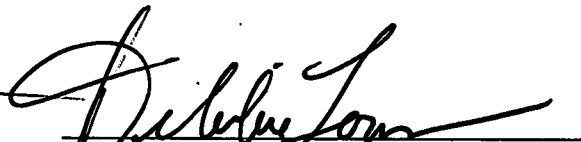
HB 1145 Insurance & Registration Required for Mopeds

Senator Meredith moved to adopt PCS for discussion and it carried. Representative Shepard and Brown were introduced to explain the bill. Senator Apodaca asked Senator Meredith to assume the role as chairman. Peter Ledford an attorney from the Research Department assisted with answering questions from the members. Representative Shepard and F. Timothy Lucas from the North Carolina Rate Bureau also helped with the questions. Senator Sanderson submitted amendment number one for consideration and approval and the motion carried. Senator Apodaca submitted amendment two to the committee for consideration and approval and the motion carried. John Yield from Select Cycle asked to address the committee with his concerns and objections to the bill and he was allowed. Senator Davis moved unfavorable to the bill – favorable to the PCS as amended and it carried. Senator Apodaca will manage the bill during session.

The meeting adjourned at 10:36 AM.



Senator Tom Apodaca, Chair
Presiding



Debbie Lown, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

Senator Apodaca, Co-Chair

Senator Meredith, Co-Chair

Wednesday, June 25, 2014

Senator Apodaca,
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO
SENATE COMMITTEE SUBSTITUTE BILL**

HB 267 (CS#2)	Limit Tolling on Existing Interstates.
	Draft Number: H267-PCS30797-MH-25
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: Yes
HB 1145 (CS#2)	Registration Required for Mopeds.
	Draft Number: H1145-PCS40268-TPf-73
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: Yes

TOTAL REPORTED: 2

Senator Tom Apodaca will handle HB 267
Senator Tom Apodaca will handle HB 1145



* C M R 1 1 1 5 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 1145
Committee Substitute Favorable 6/17/14
Committee Substitute #2 Favorable 6/19/14
Fourth Edition Engrossed 6/19/14
PROPOSED SENATE COMMITTEE SUBSTITUTE H1145-CSTPf-73 [v.3]
6/24/2014 3:28:40 PM

Short Title: Insurance & Registration Required for Mopeds.

(Public)

Sponsors:

Referred to:

May 21, 2014

A BILL TO BE ENTITLED
AN ACT TO REQUIRE MOPEDS TO BE REGISTERED WITH THE DIVISION OF
MOTOR VEHICLES AND FOR OPERATORS OF MOPEDS TO HAVE IN FULL
FORCE AND EFFECT A POLICY OF FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-10.1 reads as rewritten:

"§ 20-10.1. Mopeds.

(a) General. – It shall be unlawful for any person who is under the age of 16 years to operate a moped as defined in G.S. 105-164.3 upon any highway or public vehicular area of this State.

(b) Registration. – Mopeds shall be registered with the Division. The owner of the moped shall pay the same fees and be issued the same type of registration card and plate issued for a motorcycle. In order to be registered with the Division and operated upon a highway or public vehicular area, a moped must meet the following requirements:

(1) The moped has a manufacturer's certificate of origin.

(2) The moped was designed and manufactured for use on highways or public vehicular areas.

(c) Financial Responsibility. – It shall be unlawful to operate a moped on a public street, highway, or vehicular area without having in full force and effect financial responsibility as required by the provisions of Article 9A and Article 13 of this Chapter. The Division shall treat a moped the same as any other motor vehicle for the purposes of compliance with Article 9A and Article 13 of this Chapter."

SECTION 2. G.S. 20-51(9) is repealed.

SECTION 3. G.S. 20-76 is amended by adding a new subsection to read:

"(c) Whenever an applicant for the registration of a moped is unable to present a manufacturer's certificate of origin for the moped, the applicant must submit an affidavit stating why the applicant does not have the manufacturer's certificate of origin and attesting that the applicant is entitled to registration. Upon receipt of the application and accompanying affidavit, the Division shall issue the applicant a registration card and plate. The Division may not require the applicant to post a bond as required under subsection (b) of this section. A person damaged by issuance of the registration card does not have a right of action against the Division."

SECTION 4. G.S. 58-36-3 reads as rewritten:



* H 1 1 4 5 - C S T P F - 7 3 - V - 3 *

1 "§ 58-36-3. Limitation of scope; motorcycle and moped endorsements allowed;
2 Department of Insurance report.

3 (a) The Bureau has no jurisdiction over:

4 ...

5 (7) Personal excess liability or personal "umbrella" insurance.

6 (8) Liability insurance and theft or physical damage insurance on mopeds, as
7 defined in G.S. 105-164.3.

8 (b) Member companies writing motorcycle liability insurance under this Article and
9 writing insurance against theft of or physical damage to motorcycles under Article 40 of this
10 Chapter may incorporate motorcycle theft and physical damage coverage as an endorsement to
11 the liability policy issued under this Article. Member companies writing moped liability
12 insurance or theft and physical damage insurance under Article 40 of this Chapter may
13 incorporate either or both types of insurance as an endorsement to liability and physical damage
14 policies issued under this Article.

15"

16 SECTION 5. G.S. 58-37-1(6) reads as rewritten:

17 "(6) "Motor vehicle" means every self-propelled vehicle that is designed for use
18 upon a highway, including trailers and semitrailers designed for use with
19 such vehicles (except traction engines, road rollers, farm tractors, tractor
20 cranes, power shovels, and well drillers). "Motor vehicle" also means a
21 motorcycle, as defined in G.S. 20-4.01(27)d. "Motor vehicle" does not mean
22 a moped, as defined in G.S. 105-164.3. Notwithstanding any other
23 provisions of this Article, liability insurance on a moped is not eligible for
24 cession to the Facility."

25 SECTION 6. G.S. 58-40-10(1) reads as rewritten:

26 "(1) "Private passenger motor vehicle" means:

- 27 a. A motor vehicle of the private passenger or station wagon type that is
28 owned or hired under a long-term contract by the policy named
29 insured and that is neither used as a public or livery conveyance for
30 passengers nor rented to others without a driver; or
31 b. A motor vehicle that is a pickup truck or van that is owned by an
32 individual or by husband and wife or individuals who are residents of
33 the same household if it:
34 1. Has a gross vehicle weight as specified by the manufacturer
35 of less than 14,000 pounds; and
36 2. Is not used for the delivery or transportation of goods or
37 materials unless such use is (i) incidental to the insured's
38 business of installing, maintaining, or repairing furnishings or
39 equipment, or (ii) for farming or ranching. Such vehicles
40 owned by a family farm copartnership or a family farm
41 corporation shall be considered owned by an individual for
42 the purposes of this section; or
43 c. A motorcycle, motorized scooter or other similar motorized vehicle
44 not used for commercial purposes. A moped, as defined in
45 G.S. 105-164.3, is not considered a motorcycle, motorized scooter, or
46 other similar motorized vehicle."

47 SECTION 7. G.S. 58-40-15 reads as rewritten:

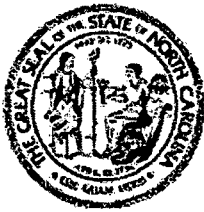
48 "§ 58-40-15. Scope of application.

49 The provisions of this Article shall apply to all insurance on risks or on operations in this
50 State, ~~except~~ except for all of the following:

- (1) Reinsurance, other than joint reinsurance to the extent stated in G.S. 58-40-60; G.S. 58-40-60.
- (2) Any policy of insurance against loss or damage to or legal liability in connection with property located outside this State, or any motor vehicle or aircraft principally garaged and used outside of this State, or any activity wholly carried on outside this ~~State~~; State.
- (3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, ~~insurance policies; policies.~~
- (4) Accident, health, or life ~~insurance; insurance.~~
- (5) ~~Annuities; Annuities.~~
- (6) Repealed by Session Laws 1985, c. 666, s. 43.
- (7) Mortgage guaranty ~~insurance; insurance.~~
- (8) Workers' compensation and employers' liability insurance written in connection ~~therewith; therewith.~~
- (9) For private passenger (nonfleet) motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists' coverage and other insurance coverages written in connection with the sale of such liability insurance; except this Article applies to motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists' coverage, and theft or physical damage insurance on mopeds, as defined in G.S. 105-164.3.
- (10) Theft of or physical damage to nonfleet private passenger motor vehicles; except this Article applies to insurance against theft of or physical damage to motorcycles, as defined in ~~G.S. 20-4.01(27)d.; and~~ G.S. 20-4.01(27)d.
- (11) Insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance. Provided, however, that this Article shall apply to insurance against loss to farm dwellings, farm buildings and their appurtenant structures, farm personal property and other coverages written in connection with farm real or personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles unless insured under policies covering nonfleet private passenger motor vehicles; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium.

The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations."

SECTION 8. This act becomes effective December 1, 2014, and applies to offenses committed on or after that date.



HOUSE BILL 1145: Insurance & Registration Required for Mopeds

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Reps. Shepard, R. Brown, Millis
Analysis of: PCS to Fourth Edition
H1145-CSTPf-73

Date: June 25, 2014
Prepared by: Peter Ledford
Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 1145 would require that mopeds be registered with the Division of Motor Vehicles and that operators of mopeds have liability insurance.*

The PCS adds liability insurance coverage requirements for moped operators.

CURRENT LAW:

A moped is defined as a vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface (G.S. 105-164.3). Mopeds are not generally treated as motor vehicles under State laws (G.S. 20-4.01(23)). Mopeds are not required to be registered (G.S. 20-51(9)), inspected (G.S. 20-183.2), or insured (G.S. 20-309), and are not subject to property tax (G.S. 105-330.1) or highway use tax (G.S. 105-187.3). Mopeds are subject to sales tax.

Operators must be at least 16 years old to operate a moped on a highway or public vehicular area (G.S. 20-10.1) but are not required to be licensed (G.S. 20-8). Operators are subject to the same requirements as operators of motorcycles with regard to carrying passengers and wearing a helmet – the number of passengers may not exceed the number the vehicle was designed to carry, and the operator and passengers must wear helmets that comply with federal standards (G.S. 20-140.4).

BILL ANALYSIS:

Registration: The PCS would repeal the current registration exemption that applies to mopeds and require that mopeds be registered with the Division of Motor Vehicles (DMV). The registration fee would be the same as the base fee for motorcycles, which is currently \$15. The bill would require that a moped have a manufacturer's certificate of origin, and only mopeds designed and manufactured for highway use could be registered with DMV and operated on a highway or public vehicular area. An applicant who is unable to provide a manufacturer's certificate of origin would be required to provide an affidavit stating why a certificate is not available and attesting that the applicant is entitled to register the vehicle. By virtue of current law, failure to register a moped would be a Class 2 misdemeanor (G.S. 20-176).

Insurance: The PCS would make it unlawful to operate a moped on a street or highway without having liability insurance coverage. Companies writing moped liability insurance or theft and physical damage insurance would be authorized to incorporate both types of insurance as an endorsement to liability and physical damage policies. Liability insurance on a moped would not be eligible for transfer to the North Carolina Motor Vehicle Reinsurance Facility, and a moped would not be considered a private passenger motor vehicle for purposes of the regulation of insurance rates.

EFFECTIVE DATE: The bill would become effective July 1, 2015 and apply to offenses committed on or after that date.

Brenda Carter, counsel to House Transportation, and Trina Griffin, counsel to House Finance, substantially contributed to this summary.

O. Walker Reagan
Director



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Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

4

HOUSE BILL 1145
Committee Substitute Favorable 6/17/14
Committee Substitute #2 Favorable 6/19/14
Fourth Edition Engrossed 6/19/14

Short Title: Registration Required for Mopeds.

(Public)

Sponsors:

Referred to:

May 21, 2014

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE MOPEDS TO BE REGISTERED WITH THE DIVISION OF
3 MOTOR VEHICLES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding
6 a new section to read:

7 "§ 20-53.4. Registration of Mopeds.

8 Mopeds shall be registered with the Division. The owner of the moped shall pay the same
9 base fee and be issued the same type of registration card and plate issued for a motorcycle. In
10 order to be registered with the Division and operated upon a highway or public vehicular area,
11 a moped must meet the following requirements:

12 (1) The moped has a manufacturer's certificate of origin.

13 (2) The moped was designed and manufactured for use on highways or public
14 vehicular areas."

15 SECTION 2. G.S. 20-51(9) is repealed.

16 SECTION 3. G.S. 20-76 is amended by adding a new subsection to read:

17 "(c) Whenever an applicant for the registration of a moped is unable to present a
18 manufacturer's certificate of origin for the moped, the applicant must submit an affidavit stating
19 why the applicant does not have the manufacturer's certificate of origin and attesting that the
20 applicant is entitled to registration. Upon receipt of the application and accompanying affidavit,
21 the Division shall issue the applicant a registration card and plate. The Division may not require
22 the applicant to post a bond as required under subsection (b) of this section. A person damaged
23 by issuance of the registration card does not have a right of action against the Division."

24 SECTION 4. The Joint Legislative Transportation Oversight Committee shall
25 study whether additional statutory changes are needed to ensure the safe operation of mopeds.
26 The report shall include data on (i) the number of mopeds involved in traffic accidents, (ii) the
27 number and types of injuries resulting from traffic accidents involving mopeds, and (iii) the
28 causes for the traffic accidents involving mopeds. The Committee shall report its findings,
29 together with any recommended legislation, to the 2015 Regular Session of the General
30 Assembly upon its convening.

31 SECTION 5. This act becomes effective July 1, 2015, and applies to offenses
32 committed on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

D

HOUSE BILL 267
Committee Substitute Favorable 5/13/13
Committee Substitute #2 Favorable 5/16/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H267-CSMH-25 [v.1]

5/27/2014 12:21:14 PM

Short Title: Captive Insurance Amendments.

(Public)

Sponsors:

Referred to:

March 11, 2013

A BILL TO BE ENTITLED
AN ACT TO AMEND LAWS GOVERNING CAPTIVE INSURANCE COMPANIES AND
RISK RETENTION GROUPS, AS RECOMMENDED BY THE DEPARTMENT OF
INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-10-340 reads as rewritten:

"§ 58-10-340. Definitions.

The following definitions apply in this Part:

(9) Captive insurance company. – Any pure captive insurance company, association captive insurance company, industrial insured captive insurance company, risk retention group, protected cell captive insurance company, incorporated cell captive insurance company, special purpose captive insurance company, or special purpose financial captive insurance company formed or licensed under this Part.

(37) Risk retention group. – A captive insurance company organized under the laws of this State pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901, et seq., as amended, as a stock or mutual corporation or as a reciprocal or other limited liability entity. Risk retention groups formed under this Part are subject to all applicable insurance laws including, but not limited to, any applicable provisions in Articles 1, 2, 3, 7, 9, 10, 12, 19, 22, 33, and 34 of this Chapter.

(38) Securities. – Those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.

(38a) Special purpose captive insurance company. – A captive insurance company that is formed or licensed under this Part that does not meet the definition of any other type of captive insurance company defined in this section and is designated as a special purpose captive insurance company by the Commissioner

...."

SECTION 2. G.S. 58-10-345 reads as rewritten:

"§ 58-10-345. Licensing; authority; confidentiality.



* H 2 6 7 - C S M H - 2 5 - V - 1 *

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.

(7) The applicant business entity shall submit to the Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the Commissioner may require.

(d) Whenever a captive insurance company desires to amend the organizational documents submitted pursuant to subdivision (c)(1) of this section, the company shall submit the amended organizational documents to the Commissioner. If the Commissioner approves the amendment, then the Commissioner shall issue a ~~letter~~ certificate to the ~~applicant company~~ certifying the Commissioner's approval. The ~~applicant business entity company~~ shall submit the organizational documents, along with a copy of the ~~approval letter~~ certificate of approval issued by the Commissioner, and the required filing fees for organizational documents prescribed in North Carolina law to the Secretary of State for filing. Upon filing the organizational documents, the Secretary of State shall issue a certificate of filing to the ~~applicant company~~. The ~~applicant company~~ shall submit a copy of the certificate of filing relative to the ~~applicant's company's~~ organizational documents issued by the Secretary of State to the Commissioner.

...."

(f) Information submitted pursuant to this ~~subsection~~ section is confidential and may be made public by the Commissioner or the Commissioner's designee only upon an order of a court of competent jurisdiction except:

(1) This ~~subdivision~~ subsection shall not apply to any risk retention group.

(2) The Commissioner shall have the discretion to disclose such information to a public official having jurisdiction over the regulation of insurance in another state, provided that:

a. The public official agrees in writing to maintain the confidentiality of such information; and

b. The laws of the state in which the public official serves require the information to be and to remain confidential.

(3) Organizational documents filed with the Secretary of State shall continue to be nonconfidential public records in the Secretary of State's office.

SECTION 3. G.S. 58-10-360 reads as rewritten:

"§ 58-10-360. Designation of captive manager.

Before licensing, ~~captive insurance companies~~ the applicant business entity shall report in writing to the Commissioner the name and address of the manager designated to manage the captive insurance company. The Commissioner shall approve the captive manager and may require the submission of additional information regarding the proposed captive manager in a form and manner as the Commissioner may designate."

SECTION 4. G.S. 58-10-365 reads as rewritten:

"§ 58-10-365. Names of companies.

No applicant business entity or captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in this State nor any name likely to mislead the public. Any name adopted by an applicant business entity or a captive insurance company shall comply with the requirements of State law."

SECTION 5. G.S. 58-10-370 reads as rewritten:

"§ 58-10-370. Capital and surplus requirements.

(a) No ~~captive insurance company~~ applicant business entity shall be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars (\$250,000) or such other amount determined by the Commissioner.

(2) In the case of an association captive insurance company, not less than five hundred thousand dollars (\$500,000).

- (3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (4) In the case of a risk retention group, not less than one million dollars (\$1,000,000).
- (5) In the case of a protected cell captive insurance company, not less than two hundred fifty thousand dollars (\$250,000).
- (6) In the case of a special purpose captive insurance company, not less than two hundred fifty thousand dollars (\$250,000).

(b) The Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business to be transacted.

(c) Capital and surplus required by subsections (a) and (b) of this section shall be in the form of cash or an cash, securities approved by the Commissioner, a clean irrevocable letter of credit issued by a bank approved by the Commissioner, Commissioner or other form approved by the Commissioner.

SECTION 6. G.S. 58-10-395 reads as rewritten:

"§ 58-10-395. Change of business.

(a) Any material change in a captive insurance company's ~~business plan~~plan of operation that was filed with the Commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval from the Commissioner.

(b) Any change in any other information filed with the application must be filed with the Commissioner within 60 days but does not require prior approval."

SECTION 7. G.S. 58-10-400 reads as rewritten:

"§ 58-10-400. Insurance manager and intermediaries.

No person shall act in or from this State as a managing general agent, producer, or reinsurance intermediary for captive business without the authorization of the ~~Commissioner. Application for such authorization must be on a form prescribed by the Commissioner.~~Commissioner.

SECTION 8. G.S. 58-10-405 reads as rewritten:

"§ 58-10-405. Annual reports.

(a) No captive insurance companies shall be required to make any annual report to the Commissioner except as provided in this Part.

(b) Prior to March 1 of each year, and prior to March 15 of each year in the case of pure captive insurance companies or industrial insured captive insurance companies, each captive insurance company shall submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the Commissioner requires, approves, or accepts the use of statutory accounting principles or other comprehensive basis of accounting. The Commissioner may require, approve, or accept any appropriate or necessary modifications of the statutory accounting principles or other comprehensive basis of accounting for the type of insurance and kinds of insurers to be reported upon. The Commissioner may require additional information to supplement such report. Except as otherwise provided, each risk retention group and association captive insurance company shall file its report in the form required by G.S. 58-2-165, and each risk retention group ~~and association captive insurance company~~ shall comply with the requirements set forth in G.S. 58-4-5. All other captive insurance companies shall report on forms adopted by the Commissioner. G.S. 58-10-345(f) shall apply to each report filed pursuant to this section. Branch captive insurance companies shall file the report required by this section unless otherwise required by G.S. 58-10-545. Special Purpose Financial Captive insurance companies shall report in accordance with G.S. 58-10-625.

(c) ~~A pure captive insurance company~~A pure captive insurance company, a special purpose captive insurance company, or an industrial insured captive insurance company may make written application to

the Commissioner for filing the required report on an alternative reporting date based on the company's fiscal year-end. If an alternative reporting date is granted by the Commissioner, then:

(1) ~~The annual report is due 75 days after the fiscal year-end.~~

(2) ~~In order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company shall file, prior to March 15 of each year for each calendar year end, pages 1, 2, 3, and 5 of the "Captive Annual Statement; Pure or Industrial Insured," verified by oath of two of its executive officers, then the annual report is due 75 days after the fiscal year-end."~~

SECTION 9. G.S. 58-10-415 reads as rewritten:

"§ 58-10-415. Annual audit and actuarial certification.

(a) All captive insurance companies with the exception of risk retention groups shall have an annual audit by an independent certified public accountant and shall file such audited financial report with the Commissioner on or before June 30 for the prior calendar year. Risk retention groups shall comply with Parts 6 and 7 of Article 10 of this Chapter instead of this section.

(b) Captive insurance companies that have received approval to report on other than a calendar year basis pursuant to G.S. 58-10-405 shall file such statements within 180 days after the end of their fiscal year.

(c) Captive insurance companies with less than one million two hundred thousand dollars (\$1,200,000) in written premium may make a written request for exemption from the annual audit requirement. Such request must be made at least 90 days prior to the captive insurance company's fiscal year-end or as otherwise required by the Commissioner. Requests will be considered on a case-by-case basis and may be subject to the Commissioner receiving an annual audit of the captive insurance company's parent company in lieu of the annual audit of the captive insurance company.

(c1) Extensions of the due dates for filings required by this section may be granted by the Commissioner for 30-day periods upon a showing by the captive insurance company and its independent certified public accountant of the reasons for requesting an extension and determination by the Commissioner of good cause for the extension. The request for extension must be received in writing not less than 10 days before the due date and in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c2) G.S. 58-10-345(f) shall apply to all information filed pursuant to this section.

(d) ~~The annual audit report shall be considered part of the captive insurance company's annual report of financial condition except with respect to the date by which it must be filed with the Commissioner. The annual audit shall consist of the following:~~

(1) ~~Opinion of independent certified public accountant. Financial statements furnished pursuant to this section shall be audited by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants or statutory accounting principles in accordance with the NAIC Accounting Practices and Procedures Manual in effect for the period covered by the report. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the captive insurance company on stationery of the accountant showing the address of issuance and shall be signed and dated.~~

(1) Annual Audited Financial Report. –The annual audited financial report shall include the following:

a. Financial statements. – Financial statements shall be prepared in accordance with generally accepted accounting principles, unless the Commissioner requires, approves, or accepts the use of statutory

- 1 accounting principles or other comprehensive basis of accounting,
2 with useful or necessary modifications or adaptations required,
3 approved or accepted by the Commissioner, and shall be audited by
4 an independent certified public accountant in accordance with
5 generally accepted auditing standards as determined by the American
6 Institute of Certified Public Accountants. The Commissioner may
7 require that the financial statement be supplemented by additional
8 information.
- 9 b. Notes to financial statements. – The notes to financial statements
10 shall be those required by generally accepted accounting principles,
11 or as otherwise approved by the Commissioner, and shall also
12 include a reconciliation of differences, if any, between the audited
13 financial report and the report of the captive insurance company's
14 financial condition filed with the Commissioner in accordance with
15 G.S. 58-10-405(b).
- 16 c. Related required auditor communications. – Copies of related
17 required auditor communications in accordance with generally
18 accepted auditing standards.
- 19 ~~(2) Report of evaluation of internal controls. – This report shall include an~~
20 ~~evaluation of the internal controls of the captive insurance company relating~~
21 ~~to the methods and procedures used in the securing of assets and the~~
22 ~~reliability of the financial records, including, but not limited to, such controls~~
23 ~~as the system of authorization and approval and the separation of duties. The~~
24 ~~review shall be conducted in accordance with generally accepted auditing~~
25 ~~standards or statutory accounting principles and the report filed with the~~
26 ~~Commissioner. An exemption from this evaluation may be granted on a~~
27 ~~case-by-case basis upon written request to the Commissioner.~~
- 28 (2) Certified Public Accountant's Affirmation. – The certified public accountant
29 shall furnish a written statement in the engagement letter or other document
30 submitted to the captive insurance company that the certified public
31 accountant is aware of and will comply with the responsibilities imposed by
32 G.S. 58-10-420(b) and G.S. 58-10-420(c).
- 33 ~~(3) Accountant's letter of qualifications. – The accountant shall furnish the~~
34 ~~captive insurance company, for inclusion in the filing of the audited annual~~
35 ~~report, a letter stating:~~
- 36 a. ~~That the accountant is independent with respect to the captive~~
37 ~~insurance company and conforms to the standards of the profession~~
38 ~~as contained in the Code of Professional Ethics, pronouncements of~~
39 ~~the American Institute of Certified Public Accountants, and~~
40 ~~pronouncements of the Financial Accounting Standards Board.~~
- 41 b. ~~The general background and experience of the staff engaged in the~~
42 ~~audit, including the experience in auditing captives or other insurance~~
43 ~~companies.~~
- 44 c. ~~That the accountant understands that the audited annual report and~~
45 ~~the accountant's opinions thereon will be filed in compliance with~~
46 ~~this section with the Commissioner.~~
- 47 d. ~~That the accountant consents to the requirements of~~
48 ~~G.S. 58-10-420(b) and (c) and that the accountant consents and~~
49 ~~agrees to make available for review by the Commissioner, the~~
50 ~~Commissioner's appointed agent, or other designee the work papers~~
51 ~~as defined in G.S. 58-10-420(e).~~

- 1 e. ~~That the accountant is properly licensed by an appropriate state~~
2 ~~licensing authority and that he or she is a member in good standing~~
3 ~~of the American Institute of Certified Public Accountants.~~
- 4 (4) ~~Financial statements. Statements required shall be as follows:~~
5 a. ~~Balance sheets reporting assets, liabilities, capital, and surplus.~~
6 b. ~~Statements of operations.~~
7 c. ~~Statements of cash flow.~~
8 d. ~~Statements of changes in capital and surplus.~~
9 e. ~~Notes to financial statements. The notes to financial statements shall~~
10 ~~be those required by generally accepted accounting principles, or as~~
11 ~~required by any other comprehensive basis of accounting in use by~~
12 ~~the captive insurance company and approved by the Commissioner,~~
13 ~~and shall include:~~
14 1. ~~A reconciliation of differences, if any, between the audited~~
15 ~~financial report and the report of its financial condition filed~~
16 ~~with the Commissioner in accordance with~~
17 ~~G.S. 58-10-405(b).~~
18 2. ~~A summary of ownership and relationship of the captive~~
19 ~~insurance company and all affiliated corporations or~~
20 ~~companies insured by the captive insurance company.~~
21 3. ~~A narrative explanation of all material transactions and~~
22 ~~balances with the captive insurance company.~~
- 23 (5) Certification of loss reserves and loss expense reserves. – The annual ~~audit~~
24 audited financial report shall be filed with a Statement of Actuarial Opinion
25 evaluating the captive insurance company's loss reserves and loss expense
26 reserves. The individual who prepares the Statement of Actuarial Opinion
27 shall be a Fellow of the Casualty Actuarial Society, a member in good
28 standing of the American Academy of Actuaries, or an individual who has
29 demonstrated competence in loss reserve evaluation to the Commissioner.
30 Certification shall be in such form as the Commissioner deems appropriate."

31 **SECTION 10.** G.S. 58-10-420 reads as rewritten:

32 **"§ 58-10-420. Independent certified public accountants.**

33 (a) A captive insurance company, after becoming subject to this Part, shall within 60
34 days report to the Commissioner in writing, the name and address of the independent certified
35 public accountant retained to conduct the annual audit set forth in G.S. 58-10-415.

36 (b) A captive insurance company shall require its independent certified public
37 accountant to immediately notify in writing an officer and all members of the board of directors
38 of the captive insurance company of any determination by the independent certified public
39 accountant that the captive insurance company has materially misstated its financial condition
40 in its report to the Commissioner as required in G.S. 58-10-405. ~~The independent certified~~
41 ~~public accountant shall furnish such notification to the Commissioner within five working days~~
42 ~~of notifying the captive insurance company. A captive insurance company receiving a~~
43 notification pursuant to this subsection shall forward a copy of the notification to the
44 Commissioner within five business days after receipt of the notification and shall provide the
45 independent certified public accountant with proof that the notification was forwarded to the
46 Commissioner. If the independent certified public accountant fails to receive the proof within
47 the five-day period required by this subsection, the independent certified public accountant
48 shall within the next five business days submit a copy of the notification to the Commissioner.

49 (c) A captive insurance company shall require its independent certified public
50 accountant to make available for review by the Commissioner or his or her appointed agent the
51 work papers prepared in the conduct of the audit of the captive insurance company. The captive

1 insurance company shall require that the independent certified public accountant retain the
2 audit work papers for a period of not less than five years after the period reported upon. The
3 aforementioned review by the Commissioner shall be considered an examination, and all
4 working papers obtained during the course of such examination shall be confidential. The
5 captive insurance company shall require that the independent certified public accountant
6 provide copies, in such form as the Commissioner deems appropriate, of any of the working
7 papers which the Commissioner considers relevant. Such working papers may be retained by
8 the Commissioner. "Work papers" as referred to in this section include, but are not necessarily
9 limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts,
10 copies of captive insurance company records, or other documents prepared or obtained by the
11 independent certified public accountant and the independent certified public accountant's
12 employees in the conduct of their audit of the captive insurance company.

13 (d) The lead audit partner may not act in that capacity for more than five consecutive
14 years. For purposes of this subsection, lead audit partner means the partner having primary
15 responsibility for the audit. The person shall be disqualified from acting in that or similar
16 capacity for the captive insurance company for a period of five consecutive years. A captive
17 insurance company may make application to the Commissioner for relief from the above
18 rotation requirement on the basis of unusual circumstances. This application should be made at
19 least 30 days before the end of the calendar year. The Commissioner may consider the
20 following factors in determining if the relief should be granted:

- 21 (1) Number of partners, expertise of the partners, or the number of insurance
22 clients in the firm;
- 23 (2) Premium volume of the captive insurance company; or
- 24 (3) Number of jurisdictions in which the insurer transacts business.

25 (e) Risk retention groups shall comply with Part 7 of Article 10 of this Chapter instead
26 of this section."

27 **SECTION 11.** G.S. 58-10-425 reads as rewritten:

28 **"§ 58-10-425. Deposit requirement.**

29 (a) ~~Whenever the Commissioner deems that the financial condition of a captive~~
30 ~~insurance company warrants additional security beyond that required pursuant to~~
31 ~~G.S. 58-10-345(e)(6), the~~The Commissioner may require a captive insurance company to
32 maintain a deposit with the Commissioner additional cash or securities approved by the
33 Commissioner or, alternatively, to furnish the Commissioner a clean irrevocable letter of credit
34 issued by a bank chartered by the State or by a member bank of the Federal Reserve System
35 and approved by the Commissioner, in a form and amount as the Commissioner may specify.

36 (b) A captive insurance company may receive interest or dividends from deposits held
37 by the Commissioner or exchange the deposits for others of equal value with the approval of
38 the Commissioner.

39 (c) If a captive insurance company discontinues business, the Commissioner shall
40 return deposits held by the Commissioner only after being satisfied that all obligations of the
41 captive insurance company have been discharged."

42 **SECTION 12.** G.S. 58-10-430 reads as rewritten:

43 **"§ 58-10-430. Examinations.**

44 (a) Whenever the Commissioner determines it to be prudent, the Commissioner shall
45 visit a captive insurance company and inspect and examine its affairs to ascertain its financial
46 condition, its ability to fulfill its obligations, and whether it has complied with this Part. The
47 expenses and charges of the examination shall be paid by the captive insurance company.

48 (b) G.S. 58-2-160 shall apply to examinations conducted under this section.

49 (c) All examination reports, preliminary examination reports or results, working papers,
50 recorded information, documents, and copies thereof produced by, obtained by, or disclosed to
51 the Commissioner or any other person in the course of an examination made under this section

are confidential, are not subject to subpoena, and may not be made public by the Commissioner or an employee or agent of the Commissioner. Nothing in this subsection shall prevent the Commissioner from using such information in furtherance of the Commissioner's regulatory authority under this Chapter. The Commissioner shall have the discretion to grant access to such information to public officials having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this State or any other state or agency of the federal government at any time only if the officials receiving the information agree in writing to maintain the confidentiality of the information in a manner consistent with this subsection.

(d) Risk retention groups are not subject to this section and shall instead be examined in accordance with the Examination Law, G.S. 58-2-131 through 58-2-134."

SECTION 13. G.S. 58-10-440(b) reads as rewritten:

"§ 58-10-440. Investment requirements.

...

(b) No pure captive insurance company, industrial insured captive insurance company, protected cell captive insurance company, incorporated cell captive insurance company, ~~or special purpose captive insurance company, or~~ special purpose financial captive insurance company shall be subject to any restrictions on allowable investments, provided that the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company."

SECTION 14. G.S. 58-10-445 reads as rewritten:

"§ 58-10-445. Reinsurance.

(a) Any captive insurance company may provide reinsurance as authorized by this Chapter on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with this Chapter. If the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer. The Commissioner shall have the discretion to allow a captive insurance company to take credit for the reinsurance of risks or portions of risks ceded to an unauthorized reinsurer, after review, on a case-by-case basis. The Commissioner may require any documents, financial information, or other evidence that ~~such will allow~~ an unauthorized reinsurer ~~will be able to~~ demonstrate adequate security for its financial obligations.

(c) In addition to reinsurers authorized by this Chapter, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association to the extent authorized by the Commissioner. The Commissioner may require any documents, financial information, or other evidence that such a pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that in the Commissioner's judgment are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and ~~consequent~~ benefit of the public at large.

...."

SECTION 15. G.S. 58-10-465 reads as rewritten:

§ 58-10-465. Applicable provisions.

(a) No provisions of this Chapter, other than those contained in this Part or as expressly provided in this Part, shall apply to captive insurance companies. Risk retention groups shall have the privileges and be subject to Article 22 of this Chapter in addition to the applicable provisions of this Part.

(b) The Commissioner may exempt, by rule, regulation, or order, special purpose captive insurance companies, on a case by case basis, from provisions of this Chapter and any

1 rules established under this Chapter that the Commissioner determines to be inappropriate
2 given the nature of the risks to be insured."

3 **SECTION 16.** G.S. 58-10-510(o) reads as rewritten:

4 "(o) The business written by a protected cell captive insurance company, with respect to
5 each protected cell, must be secured by one of the following methods:

- 6 (1) Fronted by an insurance company licensed under the laws of any state.
- 7 (2) Reinsured by a reinsurer authorized or approved by this State.
- 8 (3) Secured by a trust fund in the United States for the benefit of policyholders
9 and claimants, funded by an irrevocable letter of credit, or other arrangement
10 that is acceptable to the Commissioner. The amount of security provided
11 shall be no less than the reserves associated with those liabilities which are
12 neither fronted nor reinsured, including reserves for losses, allocated loss
13 adjustment expenses, incurred but not reported losses, and unearned
14 premiums for business written through the participant's protected cell. The
15 Commissioner may require the protected cell captive insurance company to
16 increase the funding of any security arrangement established under this
17 subdivision. If the form of security is a letter of credit, the letter of credit
18 shall be issued ~~or confirmed~~ by a bank approved by the Commissioner. A
19 trust maintained pursuant to this subdivision shall be established in a form
20 and upon such terms approved by the Commissioner."

21 **SECTION 17.** G.S. 58-10-520 reads as rewritten:

22 **"§ 58-10-520. Combining assets of protected cells.**

23 Notwithstanding G.S. 58-10-510, the assets of two or more protected cells may be
24 combined for purposes of investment and such combination shall not be construed as defeating
25 the segregation of such assets for accounting or other purposes. ~~Protected cell captive insurance~~
26 ~~companies shall comply with the investment requirements contained in G.S. 58-7-167,~~
27 ~~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,~~
28 ~~58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable; provided that~~
29 ~~compliance with such investment requirements shall be waived for protected cell captive~~
30 ~~insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed~~
31 ~~pursuant to G.S. 58-10-445 or to the extent otherwise deemed reasonable and appropriate by~~
32 ~~the Commissioner. Notwithstanding any other provision of this Chapter, the Commissioner~~
33 ~~may approve the use of alternative reliable methods of valuation and rating."~~

34 **SECTION 18.** G.S. 58-10-565(c) reads as rewritten:

35 "(c) A complete SPFC application shall include the following:

- 36 ...
- 37 (5) An affidavit from the applicant SPFC verifying:
 - 38 a. The applicant SPFC complies with this Part.
 - 39 b. The applicant SPFC operates only pursuant to this Part.
 - 40 c. The applicant SPFC's investment strategy reflects and takes into
41 account the liquidity of assets and the reasonable preservation,
42 administration, and asset management of such assets relative to the
43 risks associated with the SPFC contract and the insurance
44 securitization transaction.
 - 45 d. The securities proposed to be issued, if any, are valid legal
46 obligations that are either properly registered ~~with the Commissioner~~
47 or constitute an exempt security or form part of an exempt
48 transaction.
- 49 (6) Any other statements or documents required by the Commissioner to
50 evaluate and complete the licensing of the SPFC."

51 **SECTION 19.** G.S. 58-10-625 reads as rewritten:

1 "§ 58-10-625. Changes in plan of operation; filing of audit and statement of operation;
2 examinations.
3

4 ...
5 (e) ~~An SPFC shall report using statutory accounting principles, unless the~~
6 ~~Commissioner requires, approves, or accepts the use of generally accepted accounting~~
7 ~~principles or other comprehensive basis of accounting. In each case the Commissioner may~~
8 ~~require, approve, or accept any appropriate or necessary modifications or adaptations to the~~
9 ~~accounting basis, and may require the report to be supplemented by additional information.~~

10 (d) Each SPFC shall file by March 1 a statement of operations report of its financial
11 condition, using either generally accepted accounting principles or, if approved, accepted, or
12 required by the Commissioner, statutory accounting principles with useful or necessary
13 modifications or adaptations for the type of insurance and kinds of insurers to be reported upon,
14 and as supplemented by additional information required by the Commissioner. The ~~statement~~
15 ~~of operations report~~ shall include a statement of income, a balance sheet, and may include a
16 detailed listing of invested assets, including identification of assets held in trust to secure the
17 obligations of the SPFC under the SPFC contract. The SPFC also may include with the filing
18 risk-based capital calculations and other adjusted capital calculations to assist the
19 Commissioner with evaluating the levels of the surplus of the SPFC for the year ending on
20 December 31 of the previous year. The ~~statements report~~ shall be prepared on forms required
21 by the Commissioner. In addition, the Commissioner may require the filing of performance
22 assessments of the SPFC contract.

23"

24 **SECTION 20. G.S. 58-3-165 reads as rewritten:**

25 **"§ 58-3-165. Business transacted with producer-controlled property or casualty insurers.**

26 (a) As used in this section:

27 (1) "Accredited state" means a state in which the insurance department or
28 regulatory agency has qualified as meeting the minimum financial regulatory
29 standards promulgated and established from time to time by the NAIC.

30 (2) "Captive insurer" means an insurance company that is owned by another
31 organization and whose exclusive purpose is to insure risks of the parent
32 organization and affiliated companies. In the case of groups and
33 associations, "captive insurer" means an insurance organization that is
34 owned by the insureds, and whose exclusive purpose is to insure risks of
35 member organizations or group members and their affiliates. "Captive
36 insurer" does not include a risk retention group licensed under Part 9 of
37 Article 10 of this Chapter.

38 (3) "Control" and its cognates mean the direct or indirect possession of the
39 power to direct or cause the direction of the management and policies of a
40 person, whether through the ownership of voting securities, by contract other
41 than a commercial contract for goods or nonmanagement services, or
42 otherwise, unless the power is the result of an official position with or
43 corporate office held by the person. Control is presumed to exist if any
44 person directly or indirectly owns, controls, holds with the power to vote, or
45 holds proxies representing ten percent (10%) or more of the voting securities
46 of any other person.

47 (4) "Controlled insurer" means an insurer that is controlled, directly or
48 indirectly, by a producer.

49 (5) "Controlling producer" means a producer who, directly or indirectly,
50 controls an insurer.

51 (6) "Insurer" means any person licensed to write property or casualty insurance
in this State. ~~"Insurer" does not mean a risk retention group under Article 22~~

1 ~~of this Chapter, includes a risk retention group licensed under Part 9 of~~
2 ~~Article 10 of this Chapter, but excludes a residual market mechanism, a joint~~
3 ~~underwriting authority, ~~not~~ and a captive insurer.~~

- 4 (7) "Producer" means an insurance broker or brokers or any other person, when,
5 for any compensation, commission, or other thing of value, that person acts
6 or aids in any manner in soliciting, negotiating, or procuring the making of
7 any insurance contract on behalf of an insured other than that person.
8 "Producer" does not mean an exclusive agent or any independent agent
9 acting on behalf of a controlled insurer, including any subagent or
10 representative of the agent, who acts as such in the solicitation of,
11 negotiation for, or procurement or making of an insurance contract, if the
12 agent is not also acting in the capacity of an insurance broker in the
13 transaction in question.

14"

15 **SECTION 21. G.S. 58-12-2 reads as rewritten:**

16 **"§ 58-12-2. Definitions.**

17 As used in this Article, the following terms have the following meanings:

- 18 (1) Adjusted risk-based capital report. – A risk-based capital report that has been
19 adjusted by the Commissioner under G.S. 58-12-6.
20 (2) Corrective order. – An order issued by the Commissioner specifying
21 corrective actions that the Commissioner has determined are required.
22 (3) Domestic insurer. – Any insurance company or health organization
23 organized in this State under Article 7 of this Chapter as specified in
24 subdivisions (4b) and (5a) of this section or under Article 15, 65, or 67 of
25 this Chapter. Chapter, or any risk retention group organized in this State
26 under Part 9 of Article 10 of this Chapter.

27"

28 **SECTION 22. G.S. 58-22-15 reads as rewritten:**

29 **"§ 58-22-15. Risk retention groups chartered in this State.**

30 (a) A risk retention group shall, pursuant to the provisions of Part 9 of Article 10 of this
31 Chapter, be chartered and licensed to write only liability insurance pursuant to this Article and,
32 except as provided elsewhere in this Article, must comply with all of the laws and rules
33 applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to the
34 extent such requirements are not a limitation on laws, administrative rules, or requirements of
35 this State.

36 (b) Before it may offer insurance in any state, each risk retention group shall also
37 submit for approval to the Commissioner of this State a plan of operation or feasibility study.
38 The Commissioner may limit the net amount of risk retained by a risk retention group for any
39 individual risk. The risk retention group shall submit an appropriate revision in the event of any
40 subsequent material change in any item of the plan of operation or feasibility study, within 10
41 days after any such change. The group shall not offer any additional kinds of liability
42 insurance, in this State or in any other state, until a revision of such plan or study is approved
43 by the Commissioner.

44 (c) At the time of filing its application for a charter, the risk retention group shall
45 provide to the Commissioner in summary form the following information: the identity of the
46 initial members of the group, the identity of those individuals who organized the group or who
47 will provide administrative services or otherwise influence or control the activities of the group,
48 the amount and nature of initial capitalization, the coverages to be afforded, and the states in
49 which the group intends to operate. Upon receipt of this information, the Commissioner shall
50 forward such information to the NAIC. Providing notification to the NAIC is in addition to and

1 shall not be sufficient to satisfy the requirements of G.S. 58-22-20 or any other sections of this
2 Article."

3 **SECTION 23.** This act becomes effective July 1, 2014.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1145

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

Page 1 of 1

H1145-ASV-101 [v.2]

**Comm. Sub. [NO]
Amends Title [NO]
Fourth Edition**

Date _____, 2014

Senator Apodaca

moves to amend the bill on page page 1, line 4, by rewriting the line to read:

"FORCE AND EFFECT A POLICY OF FINANCIAL RESPONSIBILITY AND TO AUTHORIZE THE TOWN OF ELIZABETHTOWN AND THE TOWN OF MATTHEWS TO ENROLL ITS EMPLOYEES, RETIREES, AND DEPENDENTS IN THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.";

and on page 3, lines 43-44, by rewriting the lines to read:

"SECTION 8. Section 31.26(j) of S.L. 2004-124, as amended by Section 29.32 of S.L. 2005-276, and S.L. 2007-405, reads as rewritten:

'SECTION 31.26.(j) This section applies to:

- (1) Bladen, Cherokee, Mitchell, Rutherford, Washington, and Wilkes Counties only, and
- (2) The Towns of Biltmore Forest, Black Creek, Black Mountain, Blowing Rock, Elizabethtown, Forest City, Matthews, Ocean Isle Beach, Sunset Beach, and Tabor City only. For purposes of Elizabethtown and Matthews, no one will be eligible for coverage as a retiree of Elizabethtown or Matthews.'

SECTION 9. Sections 8 and 9 of this act are effective when they becomes law. The remainder of this act becomes effective December 1, 2014, and applies to offenses committed on or after that date."

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

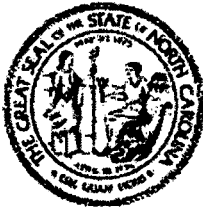
ADOPTED

FAILED

TABLED



* H 1 1 4 5 - A S V - 1 0 1 - V - 2 *



HOUSE BILL 267: Captive Insurance Amendments

2013-2014 General Assembly

Committee: Senate Insurance
Introduced by: Reps. Collins, Torbett, Floyd, Wray
Analysis of: PCS to Third Edition
H267-CSMH-5

Date: June 23, 2014
Prepared by: Peter Ledford
Committee Counsel

SUMMARY: *The Proposed Committee Substitute to House Bill 267 makes various changes to the statutes governing captive insurance companies in the State.*

CURRENT LAW: Session Law 2013-116 (House Bill 473) enacted the North Carolina Captive Insurance Act. Effective July 1, 2013, captive insurance companies may form and operate in the State.

BILL ANALYSIS: The PCS to House Bill 267 would make various changes to the North Carolina Captive Insurance Act.

Provisions Related to Special Purpose Captive Insurance Companies

The PCS to House Bill 267 would allow special purpose captive insurance companies to operate in the State. **Section 1** of the PCS would define special purpose captive insurance companies as captive insurance companies that do not meet the definitions of any other type of captive insurance company and that are designated as special purpose captive insurance companies by the Commissioner of Insurance. **Section 2** of the PCS would authorize special purpose captive insurance companies to provide insurance or reinsurance for risks approved by the Commissioner. **Section 5** would require that a special purpose captive insurance company possess and maintain unimpaired paid-in capital and surplus of at least \$250,000. **Section 8** would require special purpose captive insurance companies to file annual reports and would allow special purpose captive insurance companies to apply to the Commissioner in the same manner as pure captive insurance companies and industrial insured captive insurance companies for permission to file such reports on a date 75 days after the end of the fiscal year for the company. **Section 13** would provide that special purpose captive insurance companies will not be subject to restrictions on allowable investments in the same manner as pure captive insurance companies, industrial insured captive insurance companies, protected cell captive insurance companies, incorporated cell captive insurance companies, and special purpose financial captive insurance companies. **Section 15** would allow the Commissioner to exempt special purpose captive insurance companies on a case-by-case basis from statutes and rules that the Commissioner determines are inappropriate given the nature of the risks being insured.

Provisions Related to Risk Retention Groups

The PCS would also make various changes to the treatment of risk retention groups in the State. **Section 1** of the PCS would subject risk retention groups to the provisions of Articles 9 (Reinsurance Intermediaries), 10 (Miscellaneous Insurer Financial Provisions), and 12 (Risk-Based Capital Requirements) of Chapter 58 of the General Statutes. **Sections 9 and 10** would provide that risk retention groups are not subject to the annual audit requirement that applies to captive insurance companies but are subject to Parts 6 (Property and Casualty Actuarial Opinions) and 7 (Annual Financial Reporting) of Article 10 of Chapter 58 of the General Statutes. **Section 12** would provide that risk retention groups are not subject to the financial condition inspection provisions that apply to captive insurance companies but are instead subject to the Examination Law set out in G.S. 58-2-131 through 58-2-134. **Section 20** would provide that risk retention groups are treated as insurers and not captive

O. Walker Reagan
Director



Research Division
(919) 733-2578

insurers under the statute governing business transacted with producer-controlled property or casualty insurers. **Section 21** would provide that a risk retention group organized in the State is treated as a domestic insurer for the purposes of the risk-based capital requirements. **Section 22** would allow the Commissioner to limit the net amount of risk retained by a risk retention group for any individual risk.

Other Provisions

The PCS would also make other miscellaneous changes to other statutes governing captive insurers in the State. **Sections 2, 3, 4, and 5** would make clarifying changes to terminology for businesses that are applying to the Commissioner for permission to become captive insurance companies (applicant business entity) and those that have been approved by the Commissioner (captive insurance company). **Sections 2 and 5** would amend the requirements for the form of capital and surplus that may satisfy the statutory requirements for captive insurance companies. **Section 7** would amend the statute governing authorization from the Commissioner for a person to act as a managing general agent, producer or reinsurance intermediary for a captive insurance company. **Section 8** would remove the requirement that association captive insurance companies comply with the requirements of G.S. 58-4-5 (Domestic insurers prohibited from transacting business in foreign states without authorization; exemptions). The section would also remove the requirement that pure captive insurance companies and industrial insured captive insurance companies file certain forms by March 15 of each year if the companies have been granted an alternative reporting date by the Commissioner. **Section 9** would allow the Commissioner to grant extensions of the due dates for annual audit and actuarial certification filings with good cause. The section would also provide that the confidentiality provisions of G.S. 58-10-345(f) apply to annual audit and actuarial certification filings. This section would also amend the requirements of the annual audit report. The report would now include an Annual Audited Financial report, including financial statements, notes to financial statements, and related auditor communications, and a Certified Public Accountant's Affirmation that the accountant is aware of the statutory requirements that an independent certified public accountant notify the officers and the board of directors of a captive insurance company if the accountant determines that the company has misrepresented its financial condition to the Commissioner and that the accountant make work papers prepared in the conduct of an audit available to the Commissioner. The report would no longer include an opinion of an independent certified public accountant, a report of evaluation of internal controls, a letter of the qualifications of the accountant, and specified financial statements. **Section 10** would require a captive insurance company, upon receiving notice from its independent certified public accountant that the accountant believes the company has materially misstated its financial condition in a report to the Commissioner, forward a copy of such notice to the Commissioner within five business days of its receipt and provide the accountant with proof that the notice was forwarded. If the accountant fails to receive such proof, the accountant is required to submit a copy of the notification to the Commissioner. **Section 11** would amend allow the Commissioner to require a captive insurance company maintain a deposit with the Commissioner in a form and amount specified by the Commissioner. **Section 17** would remove the requirement that protected cell captive insurance companies comply with specific investment requirements that do not apply to other captive insurance companies. **Section 19** would remove the authority of the Commissioner to allow a special purpose financial captive to comply with generally accepted accounting principles instead of statutory accounting principles. The section would also require special purpose financial captives file an annual report of its financial condition, rather than a statement of operations.

Sections 6, 14, 16, and 18 would make technical and terminology changes.

EFFECTIVE DATE: This act becomes effective July 1, 2014.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

3

HOUSE BILL 267
Committee Substitute Favorable 5/13/13
Committee Substitute #2 Favorable 5/16/13

Short Title: Limit Tolling on Existing Interstates.

(Public)

Sponsors:

Referred to:

March 11, 2013

A BILL TO BE ENTITLED

AN ACT TO SPECIFY THE CONDITIONS UNDER WHICH THE TURNPIKE
AUTHORITY MAY COLLECT TOLLS ON AN EXISTING INTERSTATE HIGHWAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-89.198 reads as rewritten:

"§ 136-89.198. Authority to toll existing interstate ~~highways.~~ highway capacity,
requirement to maintain non-toll capacity.

(a) General. – ~~Notwithstanding any other provision of this Article, the~~ The Authority
may collect tolls on ~~any existing interstate highway~~ highway capacity, if all of the following
conditions are met:

(1) ~~for which the~~ The United States Department of Transportation has granted
permission by permit, or any other lawful means, to do so.

(2) The Authority continuously maintains at all times at least the same number
of general purpose non-toll lanes on the affected segment that were available
prior to imposition of any tolls. The Authority may authorize brief lane
closures during reasonable periods of repair and maintenance of the non-toll
lanes, but must maintain access to non-toll lanes at all times during the repair
or maintenance.

(3) The revenue generated from the collected tolls shall be used by the Authority
to increase capacity on, rebuild, repair and or maintain the interstate corridor
on which the tolls were collected. collected, including roads used for ingress
or egress to the toll facility or roads that intersect with the toll facility
whether by ramps or separated grade facility and located within one mile in
any direction. These revenues shall not be used to repair, maintain, or
upgrade any other State primary or secondary road adjacent to or connected
with the interstate highways.

(b) Method. – The Authority shall establish toll locations on the permitted interstate
highway in accordance with federal guidelines. Toll locations shall be erected at or near the
borders of the State and at such other locations that are not impracticable, unfeasible, or that
would result in an unsafe or hazardous condition.

(c) Severability. – If any provision of this section or its application is held invalid, the
invalidity does not affect other provisions or applications of this section that can be given effect
without the invalid provisions or application, and to this end the provisions of this section are
severable."



* H 2 6 7 - V - 3 *

1 **SECTION 2.** This act is effective when it becomes law and applies to any project
2 on an existing interstate highway let for construction after that date.

VISITOR REGISTRATION SHEET

Senate **INSURANCE** Committee

June 25, 2014

Name of Committee

Date

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Kelly Thomas	Dmv
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Hase Mozingo	NC DMV
C. Mansfield	NC DMV
Rhiannon Bell	NCMMC
Julie White	NCMMC
R. Lane Brown	NCCIA

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Senate **INSURANCE** Committee

June 25, 2014

Name of Committee

Date

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LC Raman

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H. R. R.

Reese

Jan

LA

SENATE SERGEANT-AT-ARMS

COMMITTEE: Senate Insurance

DATE: 06-25-2014

ROOM: 1027

1. ERNIE SHERRELL

2. CANTON LEWIS

3. GILES JEFFREYS

4. _____

5. _____

6. _____

PAGES ATTENDING

Date: 6/25 10^{AM}

Committee: Insurance Room: 1027

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Page Name	Hometown	Sponsoring Senator
1 Alexis Johnson-Mobley	Raleigh	Dan Blue
2 Weston Davis	Raleigh	Neal Hunt
3 Tas'zhane Jabbaar	Fayetteville	Robert Clark
4 Aubrey Greene	Crossnore	Dan Soucek
5 Gabby Hubert Walter Jackson	Waxhaw Laurinburg	Tommy Tucker McLaurin
6 Martha McMain	Norman	Walters
7 Troy Garrett	Asheboro	Jerry Tillman
8		
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.