

Article 12.

Risk-Based Capital Requirements.

§ 58-12-1: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-12-2. Definitions.

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

- (1) Adjusted risk-based capital report. – A risk-based capital report that has been adjusted by the Commissioner under G.S. 58-12-6.
- (2) Corrective order. – An order issued by the Commissioner specifying corrective actions that the Commissioner has determined are required.
- (3) Domestic insurer. – Any insurance company or health organization organized in this State under Article 7 of this Chapter as specified in subdivisions (4b) and (5a) of this section or under Article 15, 65, or 67 of this Chapter or any risk retention group organized in this State under Part 9 of Article 10 of this Chapter.
- (4) Foreign insurer. – Any insurance company or health organization that is admitted to do business in this State under Article 16 or 67 of this Chapter but is not domiciled in this State.
- (4a) Health organization. – Any insurer which is required by the Commissioner to use the NAIC Health Annual Statement Blank when filing the annual statement prescribed by G.S. 58-2-165 or any health maintenance organization, limited health service organization, dental or vision plan, hospital, medical, or dental indemnity or service corporation, or other organization licensed under Article 65 or 67 of this Chapter. "Health organization" does not include an insurer that is licensed as either a life or health insurer or a property or casualty insurer under this Chapter and that is otherwise subject to either the life or property and casualty risk-based capital requirements.
- (4b) Life or health insurer. – Any insurance company licensed to write the kinds of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property and casualty insurer writing only the kinds of insurance specified in G.S. 58-7-15(3). "Life or health insurer" does not mean any insurer that is required by the Commissioner to use the NAIC Health Annual Statement Blank when it files the annual statement prescribed by G.S. 58-2-165.
- (5) Negative trend. – A negative trend, with respect to a life or health insurer, over a period of time, as determined in accordance with the "trend test calculation" included in the risk-based capital instructions.
- (5a) Property or casualty insurer. – Any insurance company licensed to write the kinds of insurance specified in G.S. 58-7-15(4) through (22); but not monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers; nor any insurer that is required by the Commissioner to use the NAIC Health Annual Statement Blank when filing the annual statement prescribed by G.S. 58-2-165.
- (6) Risk-based capital instructions. – The risk-based capital report including risk-based capital instructions adopted by the NAIC, as those risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

- (7) Risk-based capital level. – An insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital where:
 - a. "Company action level risk-based capital" means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital.
 - b. "Regulatory action level risk-based capital" means the product of 1.5 and its authorized control level risk-based capital.
 - c. "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
 - d. "Mandatory control level risk-based capital" means the product of .70 and the authorized control level risk-based capital.
- (8) Risk-based capital plan. – A comprehensive financial plan containing the elements specified in G.S. 58-12-11(b). If the Commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the "revised risk-based capital plan".
- (9) Risk-based capital report. – The report required in G.S. 58-12-6.
- (10) Total adjusted capital. – The sum of:
 - a. An insurer's statutory capital and surplus, as determined in accordance with the statutory accounting applicable to the annual financial statements required under G.S. 58-2-165; and
 - b. Such other items, if any, as the risk-based capital instructions may provide. (1993 (Reg. Sess., 1994), c. 678, s. 1; 1995, c. 318, s. 2; 2001-223, ss. 12.1, 12.2, 12.3; 2011-196, s. 6; 2014-65, s. 21.)

§ 58-12-4. Finding; endorsement of additional capital.

The General Assembly finds that an excess of capital over the amount produced by the risk-based capital requirements contained in this Article and in the formulas, schedules, and instructions referenced in this Article is desirable in the business of insurance. Accordingly, the General Assembly encourages insurers to seek to maintain capital above the risk-based capital levels required by this Article. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance but not accounted for or only partially measured by the risk-based capital requirements contained in this Article. (1995, c. 318, s. 3.)

§ 58-12-5. Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-12-6. Risk-based capital reports.

(a) Every domestic insurer shall, on or before each March 1 (the "filing date"), prepare and submit to the Commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

- (1) With the NAIC in accordance with the risk-based capital instructions; and

- (2) With the insurance regulator in any state in which the insurer is authorized to do business, if the Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:
 - a. Fifteen days after the receipt of notice to file its risk-based capital report with that state; or
 - b. The filing date.

(b) A life or health insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account (and may adjust for the covariance between):

- (1) The risk with respect to the insurer's assets;
- (2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- (3) The interest rate risk with respect to the insurer's business; and
- (4) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

These risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(c) If a domestic insurer files a risk-based capital report that in the judgment of the Commissioner is inaccurate, the Commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk-based capital report as adjusted is referred to as an "adjusted risk-based capital report".

(d) A property or casualty insurer's risk-based capital and a health organization's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account (and may adjust for the covariance between):

- (1) Asset risk;
- (2) Credit risk;
- (3) Underwriting risk; and
- (4) All business and other relevant risks set forth in the risk-based capital instructions, determined in each case by applying the factors in the manner set forth in the risk-based capital instructions. (1993 (Reg. Sess., 1994), c. 678, s. 1; 1995, c. 318, s. 4; 2001-223, s. 12.4.)

§ 58-12-10. Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-12-11. Company action level event.

(a) "Company action level event" means any of the following events:

- (1) The filing of a risk-based capital report by an insurer that indicates any of the following:
 - a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital.
 - b. In the case of a life or health insurer, the insurer has total adjusted capital that (i) is greater than or equal to its company action level risk-based

capital but less than three times its authorized control level risk-based capital and (ii) has a negative trend.

c. In the case of a property or casualty insurer or a health organization, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty or health organization risk-based capital instructions.

(2) The notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in sub-subdivision (1)a., (1)b., or (1)c. of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.

(3) If the insurer challenges an adjusted risk-based capital report that indicates the event in sub-subdivision (1)a., (1)b., or (1)c. of this subsection under G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the insurer's challenge.

(b) In the event of a company action level event, the insurer shall prepare and submit to the Commissioner a comprehensive financial plan that:

(1) Identifies the conditions in the insurer that contribute to the company action level event.

(2) Contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event.

(3) Provides forecasts of the insurer's financial results in the current year and at least the four succeeding years (except for health organizations, which must provide forecasts in the current year and at least the two succeeding years), both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including forecasts of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels (the forecasts for both new and renewal business should include separate forecasts for each major line of business and separately identify each significant income, expense, and benefit component).

(4) Identifies the key assumptions affecting the insurer's forecasts and the sensitivity of the forecasts to the assumptions.

(5) Identifies the quality of, and problems associated with, the insurer's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case, if any.

(c) The risk-based capital plan shall be submitted:

(1) Within 45 days after the company action level event; or

(2) If the insurer challenges an adjusted risk-based capital report pursuant to G.S. 58-12-30, within 45 days after notification to the insurer that the Commissioner has rejected the insurer's challenge.

(d) Within 60 days after the submittal by an insurer of a risk-based capital plan to the Commissioner, the Commissioner shall notify the insurer whether the risk-based capital plan shall

be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the risk-based capital plan satisfactory, in the judgment of the Commissioner. Upon notification from the Commissioner, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the Commissioner, and shall submit the revised risk-based capital plan to the Commissioner:

- (1) Within 45 days after notification from the Commissioner; or
- (2) If the insurer challenges the notification from the Commissioner under G.S. 58-12-30, within 45 days after a notification to the insurer that the Commissioner has rejected the insurer's challenge.

(e) In the event of a notification by the Commissioner to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the Commissioner may, subject to the insurer's right to a hearing under G.S. 58-12-30, specify in the notification that the notification constitutes a regulatory action level event.

(f) Every domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the Commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance regulator in any state in which the insurer is authorized to do business if:

- (1) That state has a risk-based capital provision substantially similar to G.S. 58-12-21(a); and
- (2) The insurance regulator of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:
 - a. Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or
 - b. The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection (c) or (d) of this section. (1993 (Reg. Sess., 1994), c. 678, s. 1; 1995, c. 193, s. 21; c. 318, s. 5; 2001-223, ss. 12.5, 12.6; 2011-196, s. 7; 2013-199, s. 4; 2015-146, s. 2.)

§ 58-12-15. Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-12-16. Regulatory action level event.

(a) "Regulatory action level event" means, with respect to any insurer, any of the following events:

- (1) The filing of a risk-based capital plan report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital.
- (2) The notification by the Commissioner to an insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection, if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.

- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the insurer's challenge.
 - (4) The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the Commissioner and has cured the failure within 10 days after the filing date.
 - (5) The failure of the insurer to submit a risk-based capital plan to the Commissioner within the time period set forth in G.S. 58-12-11(c).
 - (6) Notification by the Commissioner to the insurer that:
 - a. The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the Commissioner, unsatisfactory; and
 - b. The notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under G.S. 58-12-30.
 - (7) If the insurer challenges a determination by the Commissioner under subdivision (6) of this subsection pursuant to G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.
 - (8) Notification by the Commissioner to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan; but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the Commissioner has so stated in the notification, provided the insurer has not challenged the determination under G.S. 58-12-30.
 - (9) If the insurer challenges a determination by the Commissioner under subdivision (8) of this subsection pursuant to G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the challenge (unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event with respect to the insurer).
- (b) In the event of a regulatory action level event the Commissioner shall:
- (1) Require the insurer to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan.
 - (2) Perform such examination or analysis, as the Commissioner deems necessary, of the assets, liabilities, and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan.
 - (3) After the examination or analysis, issue an order specifying such corrective actions as the Commissioner shall determine are required (a "Corrective Order").
- (c) In determining corrective actions, the Commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the Commissioner's

examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted:

- (1) Within 45 days after the occurrence of the regulatory action level event;
- (2) If the insurer challenges an adjusted risk-based capital report pursuant to G.S. 58-12-30 and the challenge is not in the judgment of the Commissioner frivolous, within 45 days after the notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge; or
- (3) If the insurer challenges a revised risk-based capital plan under G.S. 58-12-30, within 45 days after notification to the insurer that the Commissioner has rejected the challenge.

(d) The Commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Commissioner to review the insurer's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the Corrective Order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the Commissioner. (1993 (Reg. Sess., 1994), c. 678, s. 1.)

§ 58-12-20. Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-12-21. Authorized control level event.

(a) "Authorized control level event" means any of the following events:

- (1) The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital.
- (2) The notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.
- (4) The failure of the insurer to respond, in a manner satisfactory to the Commissioner, to a Corrective Order if the insurer has not challenged the Corrective Order under G.S. 58-12-30.
- (5) If the insurer has challenged a Corrective Order under G.S. 58-12-30 and the Commissioner has rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the Commissioner, to the Corrective Order after the rejection or modification by the Commissioner.

(b) In the event of an authorized control level event with respect to an insurer, the Commissioner shall:

- (1) Take such actions as are required under G.S. 58-12-30 regarding an insurer with respect to which a regulatory action level event has occurred; or

- (2) If the Commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under Article 30 of this Chapter. If the Commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the Commissioner to take action under Article 30 of this Chapter, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Article 30 of this Chapter. If the Commissioner takes actions under this subdivision pursuant to an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Article 30 of this Chapter pertaining to summary proceedings. (1993 (Reg. Sess., 1994), c. 678, s. 1.)

§ 58-12-25. Mandatory control level event.

(a) "Mandatory control level event" means any of the following events:

- (1) The filing of a risk-based capital report that indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital.
- (2) Notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.

(b) In the event of a mandatory control level event with respect to a life insurer or a health organization, the Commissioner shall take actions as are necessary to cause the insurer to be placed under regulatory control under Article 30 of this Chapter. The mandatory control level event is sufficient grounds for the Commissioner to take action under Article 30 of this Chapter, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Article 30 of this Chapter. If the Commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Article 30 of this Chapter pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the mandatory control level event if the Commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

(c) In the event of a mandatory control level event with respect to a property and casualty insurer, the Commissioner shall take actions as are necessary to cause the insurer to be placed under regulatory control under Article 30 of this Chapter, or, in the case of an insurer which is writing no business and which is running off its existing business, may allow the insurer to continue its runoff under the supervision of the Commissioner. In either event, the mandatory control level event is sufficient grounds for the Commissioner to take action under Article 30 of this Chapter, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Article 30 of this Chapter. If the Commissioner takes actions under an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Article 30 of this Chapter pertaining to summary proceedings.

Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the mandatory control level event if the Commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period. (1993 (Reg. Sess., 1994), c. 678, s. 1; 2001-223, ss. 12.7, 12.8.)

§ 58-12-30. Hearings.

Upon (i) notification to an insurer by the Commissioner of an adjusted risk-based capital report; or (ii) notification to an insurer by the Commissioner that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, and the notification constitutes a regulatory action level event with respect to the insurer; or (iii) notification to any insurer by the Commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or (iv) notification to an insurer by the Commissioner of a corrective order with respect to the insurer, the insurer has a right to a confidential hearing, at which the insurer may challenge any determination or action by the Commissioner. The insurer shall notify the Commissioner of its request for a hearing within five days after the notification by the Commissioner under this section. Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the hearing; the date shall be no less than 10 days nor more than 30 days after the date of the insurer's request. (1993 (Reg. Sess., 1994), c. 678, s. 1; 1995, c. 517, s. 5.)

§ 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 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.

(b) The General Assembly finds that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this Article, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio

or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation by any insurer, agent, broker, or other person engaged in any manner in the insurance business is prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels (or any of them) or an inappropriate comparison of any other amount to the insurers' risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the Commissioner, with substantial proof, the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement. (1993 (Reg. Sess., 1994), c. 678, s. 1; 1995, c. 193, s. 22; 2013-199, s. 5.)

§ 58-12-40. Supplemental provisions; rules; exemptions.

(a) The provisions of this Article are supplemental to any other provisions of the laws of this State, and do not preclude or limit any other powers or duties of the Commissioner under those laws, including Article 30 of this Chapter.

(b) Risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are solely for use by the Commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The Commissioner shall not use any of these reports or plans for rate making nor consider or introduce them as evidence in any rate proceeding. The Commissioner shall not use these reports or plans to calculate or derive any elements of an appropriate premium level or rate of return for any kind of insurance that an insurer or any affiliate is authorized to write.

(c) The Commissioner may exempt from the application of this Article any domestic property or casualty insurer that:

- (1) Writes direct business only in this State.
- (2) Writes direct annual premiums of two million dollars (\$2,000,000) or less.
- (3) Assumes no reinsurance in excess of five percent (5%) of direct written premiums.

(d) The Commissioner may, in the Commissioner's discretion, exempt from the application of this Article:

- (1) Any domestic town or county mutual insurance company organized under G.S. 58-7-75(5)d.
- (2) Any domestic life or health insurer that:
 - a. Has no direct or assumed annual premiums; and
 - b. Has no direct or assumed policyholder obligations.
- (3) Any domestic health maintenance organization that:
 - a. Writes only direct business in this State;
 - b. Assumes no reinsurance in excess of five percent (5%) of direct written premiums; and
 - c. Writes direct annual premiums for a comprehensive medical business of two million dollars (\$2,000,000) or less, or is a single service health maintenance organization that covers less than 2,000 lives. (1993 (Reg. Sess., 1994), c. 678, s. 1; 1995, c. 318, s. 6; 2005-215, s. 22.)

§ 58-12-45. Foreign insurers.

(a) Any foreign insurer shall, upon written request of the Commissioner, submit to the Commissioner a risk-based capital report as of the end of the calendar year just ended the later of:

- (1) The date a risk-based capital report would be required to be filed by a domestic insurer under this Article; or
- (2) Fifteen days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the Commissioner, promptly submit to the Commissioner a copy of any risk-based capital plan that is filed with the insurance regulator of any other state.

(b) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to any foreign insurer as determined under the risk-based capital statute or rule applicable in the state of domicile of the insurer, or if no risk-based capital statute or rule is in force in that state under the provisions of this Article, if the insurance regulator of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the risk-based capital statute or, if no risk-based capital provision is in force in that state, under G.S. 58-12-11, the Commissioner may require the foreign insurer to file a risk-based capital plan with the Commissioner. In that event the failure of the foreign insurer to file a risk-based capital plan with the Commissioner is grounds to order the insurer to cease and desist from writing new insurance business in this State.

(c) In the event of a mandatory control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation or liquidation statutes of the state of domicile of the foreign insurer, the Commissioner may make application to the Superior Court of Wake County as permitted under Article 30 of this Chapter with respect to the liquidation of property of foreign insurers found in this State; and the occurrence of the mandatory control level event is an adequate ground for the application. (1993 (Reg. Sess., 1994), c. 678, s. 1; 1995, c. 193, s. 23.)

§ 58-12-50. Notices.

All notices by the Commissioner to an insurer that may result in regulatory action under this Article are effective upon dispatch if transmitted by registered or certified mail; or in the case of any other transmission are effective upon the insurer's receipt of the notice. (1993 (Reg. Sess., 1994), c. 678, s. 1.)

§ 58-12-55. Phase-in provision.

For risk-based capital reports required to be filed with respect to 1994, the following requirements apply in lieu of the provisions of G.S. 58-12-11:

- (1) In the event of a company action level event with respect to a domestic insurer, the Commissioner shall take no regulatory action hereunder.
- (2) In the event of a regulatory action level event under G.S. 58-12-16(a)(1), (2), or (3) the Commissioner shall take the actions required under G.S. 58-12-11.
- (3) In the event of a regulatory action level event under G.S. 58-12-16(a)(4), (5), (6), (7), (8), or (9) or an authorized control level event, the Commissioner shall take the actions required under G.S. 58-12-16 with respect to the insurer.
- (4) In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under G.S. 58-12-21 with respect to the insurer. (1993 (Reg. Sess., 1994), c. 678, s. 1.)

§ 58-12-60. Property or casualty phase-in provision.

For risk-based capital reports required to be filed by property or casualty insurers with respect to 1995, the following requirements apply in lieu of the provisions of G.S. 58-12-11, 58-12-16, 58-12-21, and 58-12-25:

- (1) In the event of a company action level event with respect to a domestic insurer, the Commissioner shall take no regulatory action under this Article.
- (2) In the event of a regulatory action level event under G.S. 58-12-16(a)(1), (2), or (3), the Commissioner shall take the actions required under G.S. 58-12-11.
- (3) In the event of a regulatory action level event under G.S. 58-12-16(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event, the Commissioner shall take the actions required under G.S. 58-12-16 with respect to the insurer.
- (4) In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under G.S. 58-12-21 with respect to the insurer. (1995, c. 318, s. 7.)

§ 58-12-65. Health organization phase-in provision.

For risk-based capital reports required to be filed by health organizations with respect to calendar year 2001, the following requirements apply in lieu of the provisions of G.S. 58-12-11, 58-12-16, 58-12-21, and 58-12-25:

- (1) In the event of a company action level event with respect to a domestic insurer, the Commissioner shall take no regulatory action under this Article.
- (2) In the event of a regulatory action level event under G.S. 58-12-16(a)(1), (2), or (3), the Commissioner shall take the actions required under G.S. 58-12-11.
- (3) In the event of a regulatory action level event under G.S. 58-12-16(a)(4), (5), (6), (7), (8) or (9), or an authorized control level event, the Commissioner shall take the actions required under G.S. 58-12-16 with respect to the insurer.
- (4) In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under G.S. 58-12-21 with respect to the insurer. (2001-223, s. 12.9.)

§ 58-12-70. HMO net worth requirements.

The Commissioner may require an HMO to have and maintain a larger amount of net worth than prescribed in G.S. 58-67-110, based upon the principles of risk-based capital as determined by the NAIC or the Commissioner. (2001-223, s. 12.10.)