

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 459*

Short Title: Insurance Financial Amendments.

(Public)

Sponsors: Senator Wellons.

Referred to: Insurance and Consumer Protection.

March 15, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND NORTH CAROLINA'S INSURANCE LAWS CONCERNING
3 INSURANCE COMPANY RESERVING METHODS, LICENSING
4 PROVISIONS, REINSURANCE FOR DOMESTIC COMPANIES, DOMESTIC
5 COMPANY FORMATION, SOLVENCY PROTECTION, LIFE INSURANCE
6 COMPANY VARIABLE ACCOUNTS, CONSOLIDATIONS, INVESTMENTS,
7 MUTUAL INSURANCE COMPANIES, REINSURANCE INTERMEDIARIES,
8 MORTGAGE GUARANTY INSURANCE, RISK-BASED CAPITAL
9 REQUIREMENTS, ASSET PROTECTION, FOREIGN INSURANCE
10 COMPANIES, PROMOTING AND HOLDING COMPANIES, HOLDING
11 COMPANY SYSTEMS, SURPLUS LINES INSURANCE, RISK RETENTION
12 GROUPS, INSURANCE COMPANY RECEIVERSHIPS, MANAGING
13 GENERAL AGENTS, SELF-INSURED WORKERS' COMPENSATION, AND
14 CONTINUING CARE RETIREMENT COMMUNITIES.

15 The General Assembly of North Carolina enacts:

16
17 **PART I. INSURANCE COMPANY RESERVING METHODS.**

18 **SECTION 1.1.** Article 3 of Chapter 58 of the General Statutes is amended
19 by adding the following new section to read:

20 **"§ 58-3-72. Premium deficiency reserves.**

21 (a) In determining the financial condition of any casualty, fidelity, and surety
22 company and any fire and marine company referred to in G.S. 58-7-75, and in any
23 financial statement or report of the company, there shall be included in the liabilities of
24 the company premium deficiency reserves at least equal to the amounts required under
25 this section. The date as of which the determination, statement, or report is made is
26 known as the 'date of determination.'

27 (b) For all recorded unearned premium reserves, a premium deficiency reserve
28 shall be calculated to include the amount by which the anticipated losses, loss

1 adjustment expenses, commissions and other acquisition costs, and maintenance costs
2 exceed the sum of those unearned premium reserves and any related expected future
3 installment premiums as of the date of determination.

4 (c) Except as provided in subsection (f) of this section, commissions, other
5 acquisition costs, and premium taxes do not have to be considered in the determination
6 of the premium deficiency reserve, to the extent that they have previously been
7 incurred.

8 (d) Except as provided in subsection (f) of this section, no reduction shall be
9 taken for anticipated investment income in the determination of the premium deficiency
10 reserve.

11 (e) For purposes of determining if a premium deficiency exists, insurance
12 contracts shall be grouped in a manner consistent with the way in which such policies
13 are marketed or serviced.

14 (f) If the Commissioner determines that the premium deficiency reserves of any
15 company that have been calculated in accordance with this section are inadequate or
16 excessive, the Commissioner may prescribe any other basis that will produce adequate
17 and reasonable reserves."

18 **SECTION 1.2.** G.S. 58-3-81 reads as rewritten:

19 "**§ 58-3-81. Loss and loss expense reserves of casualty insurance and surety**
20 **companies.**

21 (a) In determining the financial condition of any casualty insurance or surety
22 company and in any financial statement or report of any such company, there shall be
23 included in the liabilities of ~~such that~~ company loss reserves and loss expense reserves
24 at least equal to the amounts required under ~~the provisions of this section, and the~~
25 section. The amount of ~~such those~~ reserves shall be diminished by an allowance or
26 credit for reinsurance recoverable from assuming ~~insurers-reinsurers~~ in accordance with
27 ~~G.S. 58-7-21.~~G.S. 58-7-21 or G.S. 58-7-26. The date as of which ~~such the~~
28 determination, statement, or report is made is ~~hereinafter referred to~~ known as the date
29 of determination.

30 (b) For all outstanding losses and loss expenses, the reserves shall be valued as of
31 the date of determination and shall include the following:

32 (1) ~~The aggregate estimated amounts due or to become due on account of~~
33 ~~all known losses and claims and loss expenses incurred but not paid,~~
34 ~~including the estimated liability on any notice received by the~~
35 ~~company of the occurrence of any event which may result in a loss;~~
36 ~~and~~ The aggregate estimated amounts due for losses and loss
37 adjustment expenses on account of all known claims.

38 (2) ~~The aggregate amounts of liability for all losses and loss expenses~~
39 ~~incurred but on which no notice has been received, estimated in~~
40 ~~accordance with the company's prior experience, if any, otherwise in~~
41 ~~accordance with the experience of similar companies under similar~~
42 ~~contracts of insurance. The estimated liabilities for such losses under~~
43 ~~all its bonds, policies, or contracts of fidelity insurance, shall be not~~
44 ~~less than ten percent (10%) of the net premiums in force thereon, and~~

1 ~~the estimated liabilities for all such losses under all its surety contracts~~
2 ~~shall be not less than five percent (5%) of the net premium in force~~
3 ~~thereon. The aggregate estimated amounts due for losses and loss~~
4 ~~adjustment expenses on account of all unknown, incurred but not~~
5 ~~reported claims.~~

6 ~~(c) Except as provided in subsection (e) of this section, the minimum reserves for~~
7 ~~outstanding losses and loss expenses under policies of personal injury liability insurance~~
8 ~~and under policies of employers' liability insurance, where the losses were incurred~~
9 ~~during the three years immediately preceding the date of determination, shall be~~
10 ~~calculated in accordance with any method adopted or approved by the NAIC and shall~~
11 ~~be not less than the aggregate of the estimated unpaid losses and loss expenses for~~
12 ~~claims incurred computed in accordance with subsection (b) of this section. Except as~~
13 ~~provided in subsection (e) of this section, the minimum loss and loss expense reserves~~
14 ~~for workers' compensation insurance shall be determined as follows:~~

15 ~~(1) In the case of indemnity benefits where tabular reserves are prescribed~~
16 ~~for the reporting of such benefits under the Workers' Compensation~~
17 ~~Statistical Plan (WCSP) of the National Council on Compensation~~
18 ~~Insurance, the minimum reserve shall be the result obtained by the~~
19 ~~application of the appropriate pension table in the WCSP, unless the~~
20 ~~reserve required by any method adopted or approved by the NAIC is~~
21 ~~greater, in which case that greater reserve shall be used.~~

22 ~~(2) In all other cases, including other indemnity benefits, medical benefits,~~
23 ~~and loss adjustment expense, the reserve shall be determined by~~
24 ~~subsection (b) of this section, unless the reserve required by any~~
25 ~~method adopted or approved by the NAIC is greater, in which case that~~
26 ~~greater reserve shall be used.~~

27 ~~(d) The minimum reserves for outstanding losses and loss expenses under~~
28 ~~policies of workers' compensation insurance, except as provided in subsection (e) of this~~
29 ~~section, shall be computed as follows:~~

30 ~~(1) For all such compensation policies where losses were incurred more~~
31 ~~than three years prior to the date of determination, such reserves shall~~
32 ~~be the sum of the present values, at three and one half percent (3~~
33 ~~1/2%) interest per annum, of the determined and estimated unpaid~~
34 ~~losses computed on an individual case basis plus the estimated unpaid~~
35 ~~loss expenses computed in accordance with subsection (b) of this~~
36 ~~section.~~

37 ~~(2) Where losses were incurred during the three years immediately~~
38 ~~preceding the date of determination, such reserves shall be the sum of~~
39 ~~the reserves for each year, which shall be calculated in accordance~~
40 ~~with any method adopted or approved by the NAIC and shall be not~~
41 ~~less than the sum of the present values, at three and one half percent (3~~
42 ~~1/2%) interest per annum, of the determined and estimated unpaid~~
43 ~~losses computed on an individual case basis plus the estimated unpaid~~

1 ~~loss expenses computed in accordance with subsection (b) of this~~
2 ~~section.~~

3 (e) Whenever in the judgment of the Commissioner the loss and loss expense
4 reserves of any casualty or surety company doing business in this State calculated in
5 accordance with the foregoing provisions are inadequate or excessive, he may prescribe
6 any other basis that will produce adequate and reasonable reserves.

7 (f) Every casualty insurance and every surety company doing business in this
8 State shall keep a complete and itemized record showing all losses and claims on which
9 it has received notices, including all notices received by it of the occurrence of any
10 event that may result in a loss."

11 PART II. INSURANCE COMPANY LICENSING PROVISIONS.

12 SECTION 2.1. G.S. 58-3-90 is repealed.

13 SECTION 2.2. G.S. 58-3-100 reads as rewritten:

14 "**§ 58-3-100. ~~Revocation, suspension and refusal to renew license.~~ Insurance**
15 **company licensing provisions.**

16 (a) ~~The Commissioner may revoke, suspend, or refuse to renew the license of~~
17 ~~any insurer if: The Commissioner may, after notice and opportunity for a hearing,~~
18 ~~revoke, suspend, restrict, or refuse to renew the license of any insurer if:~~
19 revoke, suspend, restrict, or refuse to renew the license of any insurer if:

- 20 (1) The insurer fails or refuses to comply with any law, order or rule
21 applicable to the insurer.
- 22 (2) The insurer's financial condition is unsound, or its assets above its
23 liabilities, exclusive of capital, are less than the amount of its capital or
24 required minimum surplus.
- 25 (3) The insurer has published or made to the Department or to the public
26 any false statement or report.
- 27 (4) The insurer or any of the insurer's officers, directors, employees, or
28 other representatives ~~refuses~~ refuse to submit to any examination
29 authorized by law, law or refuse to perform any legal obligation in
30 relation to an examination.
- 31 (5) The insurer is found to make a practice of unduly engaging in
32 litigation or of delaying the investigation of claims or the adjustment
33 or payment of valid claims.

34 (b) Any suspension, revocation or refusal to renew an insurer's license under this
35 section may also be made applicable to the license or registration of any ~~natural person~~
36 individual regulated under this Chapter who is a party to any of the causes for licensing
37 sanctions listed in subsection (a) of this section.

38 (c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an
39 HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30
40 days after receiving written or electronic notice of the claim, but only if the notice
41 contains sufficient information for the insurer to identify the specific coverage involved.
42 Acknowledgement of the claim shall be ~~made to the claimant or his legal representative~~
43 ~~advising that the claim is being investigated; or shall be a payment of the claim; or shall~~

1 ~~be a bona fide written offer of settlement; or shall be a written denial of the claim. one~~
2 ~~of the following:~~

- 3 ~~(1) A statement made to the claimant or to the claimant's legal~~
4 ~~representative advising that the claim is being investigated.~~
5 ~~(2) Payment of the claim.~~
6 ~~(3) A bona fide written offer of settlement.~~
7 ~~(4) A written denial of the claim.~~

8 A claimant includes an insured, a health care provider, or a health care facility that is
9 responsible for directly making the claim with an ~~insurer,~~ insurer, HMO, service
10 corporation, or MEWA. This subsection does not apply to HMOs, service corporations,
11 MEWAs or insurers subject to G.S. 58-3-225.

12 ~~(d) If a foreign insurance company's license is suspended or revoked, the~~
13 ~~Commissioner shall cause written notification of the suspension or revocation to be~~
14 ~~given to all of the company's agents in this State. Until the Commissioner restores the~~
15 ~~company's license, the company shall not write any new business in this State.~~

16 ~~(e) The Commissioner may, after considering the standards under G.S. 58-30-~~
17 ~~60(b), restrict an insurer's license by prohibiting or limiting the kind or amount of~~
18 ~~insurance written by that insurer. For a foreign insurer, this restriction relates to the~~
19 ~~insurer's business conducted in this State. The Commissioner shall remove any~~
20 ~~restriction under this subsection once the Commissioner determines that the operations~~
21 ~~of the insurer are no longer hazardous to the public or the insurer's policyholders or~~
22 ~~creditors. As used in this subsection, 'insurer' includes an HMO, service corporation,~~
23 ~~and MEWA."~~

24 **SECTION 2.3.** This Part becomes effective July 1, 2001.

25 **PART III. REINSURANCE FOR DOMESTIC COMPANIES.**

26 **SECTION 3.1.** G.S. 58-7-21 reads as rewritten:

27 **"§ 58-7-21. Credit allowed a domestic ceding insurer.**

28 (a) ~~As used in this section and in G.S. 58-7-26, 58-7-30, and 58-7-31:~~

- 29 (1) ~~"Reinsurance" means a transfer of insurance risk from a ceding insurer~~
30 ~~to an assuming insurer.~~
31 (2) ~~"Insurance risk" means an uncertainty regarding the ultimate amount~~
32 ~~of any claim payment (underwriting risk) or an uncertainty regarding~~
33 ~~the timing of the payments (timing risk), or both.~~

34 The purpose of this section and G.S. 58-7-26 is to protect the interest of insureds,
35 claimants, ceding insurers, assuming insurers, and the public generally. The General
36 Assembly declares its intent is to ensure adequate regulation of insurers and reinsurers
37 and adequate protection for those to whom they owe obligations. In furtherance of that
38 interest, the General Assembly provides a mandate that upon the insolvency of a alien
39 insurer or reinsurer that provides security to fund its United States obligations in
40 accordance with this section and G.S. 58-7-26, the assets representing the security shall
41 be maintained in the United States and claims shall be filed with and valued by the state
42 insurance commissioner with regulatory oversight, and the assets shall be distributed, in
43 accordance with the insurance laws of the state in which the trust is domiciled that are
44

1 applicable to the liquidation of domestic United States insurance companies. The
2 General Assembly declares that the matters contained in this section and G.S. 58-7-26
3 are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-
4 1012.

5 (b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an
6 asset or a ~~deduction~~ reduction from liability on account of reinsurance ceded only when
7 the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this
8 subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection
9 only with regard to cessions of those kinds or classes of business in which the assuming
10 insurer is licensed or otherwise permitted to write or assume in its state of domicile or,
11 in the case of a United States branch of an alien assuming insurer, in the state through
12 which it is entered and licensed to transact insurance or reinsurance. ~~If meeting the~~
13 requirements of subdivisions (3) or (4) of this subsection, the reinsurer must also meet
14 the requirements of subdivision (6) of this subsection. Credit shall be allowed under
15 subdivision (3) or (4) of this subsection only if the applicable requirements of
16 subdivision (6) of this section have been satisfied.

17 (1) Credit shall be allowed when the reinsurance is ceded to an assuming
18 insurer that is licensed to transact insurance or reinsurance in this
19 State.

20 (2) Credit shall be allowed when the reinsurance is ceded to an assuming
21 insurer that is accredited as a reinsurer in this State. An accredited
22 reinsurer is one that:

- 23 a. Files with the Commissioner evidence of its submission to this
24 State's jurisdiction;
- 25 b. Submits to this State's authority to examine its books and
26 records;
- 27 c. Is licensed to transact insurance or reinsurance in at least one
28 state, or in the case of a United States branch of an alien
29 assuming insurer is entered through and licensed to transact
30 insurance or reinsurance in at least one state;
- 31 d. Files annually with the Commissioner a copy of its annual
32 statement filed with the insurance regulator of its state of
33 domicile, a copy of its most recent audited financial statement,
34 and a fee of five hundred dollars (\$500.00); and either
 - 35 1. Maintains a policyholders' surplus in an amount that is
36 not less than twenty million dollars (\$20,000,000) and
37 whose accreditation has not been denied by the
38 Commissioner within 90 days after its submission; or
 - 39 2. Maintains a policyholders' surplus in an amount less than
40 twenty million dollars (\$20,000,000) and whose
41 accreditation has been approved by the Commissioner.

42 ~~No credit~~ Credit shall not be allowed a domestic ceding insurer
43 if the assuming insurer's accreditation has been revoked by the
44 Commissioner after notice and opportunity for a hearing.

- 1 (3) Credit shall be allowed when the reinsurance is ceded to an assuming
2 insurer that is domiciled ~~and licensed in~~, or in the case of a United
3 States branch of an alien assuming insurer is entered through, a state
4 that uses standards regarding credit for reinsurance substantially
5 similar to those applicable under this section and the assuming insurer
6 or United States branch of an alien assuming insurer:
7 a. Maintains a policyholders' surplus in an amount not less than
8 twenty million dollars (\$20,000,000); and
9 b. Submits to the authority of this State to examine its books and
10 records.

11 ~~However, the~~ The requirement in sub-subdivision (3)a. of this
12 subsection does not apply to reinsurance ceded and assumed under
13 pooling arrangements among insurers in the same holding company
14 system.

- 15 (4) a. Credit shall be allowed when the reinsurance is ceded to an
16 assuming insurer that maintains a trust fund in a qualified
17 United States financial institution, as defined in G.S.
18 58-7-26(b), for the payment of the valid claims of its United
19 States ~~policyholders and ceding insurers~~, their assigns and
20 successors in interest. The assuming insurer shall report
21 annually to the Commissioner information substantially the
22 same as that required to be reported on the NAIC Annual
23 Statement form by licensed insurers to enable the
24 Commissioner to determine the sufficiency of the trust fund.
25 The assuming insurer shall submit to examination of its books
26 and records by the Commissioner and bear the expense of
27 examination. In the case of a single assuming insurer, the trust
28 ~~shall consist of a trustee account representing the assuming~~
29 ~~insurer's liabilities attributable to business written in the United~~
30 ~~States and, in addition, the assuming insurer shall maintain a~~
31 ~~trustee surplus of not less than twenty million dollars~~
32 ~~(\$20,000,000). In the case of a group of insurers, which~~
33 ~~includes individual unincorporated underwriters, the trust shall~~
34 ~~consist of a trustee account representing the group's liabilities~~
35 ~~attributable to business written in the United States and, in~~
36 ~~addition, the group shall maintain a trustee surplus of which~~
37 ~~one hundred million dollars (\$100,000,000) shall be held jointly~~
38 ~~for the benefit of United States ceding insurers of any member~~
39 ~~of the group; and the group shall make available to the~~
40 ~~Commissioner an annual certification of the solvency of each~~
41 ~~underwriter by the group's domiciliary regulator and its~~
42 ~~independent certified public accountants.~~
43 b. ~~In the case of a group of incorporated insurers under common~~
44 ~~administration which (i) complies with the filing requirements~~

1 contained in the previous paragraph, (ii) has continuously
2 transacted an insurance business outside the United States for at
3 least three years immediately before making application for
4 accreditation, (iii) submits to this State's authority to examine
5 its books and records, and (iv) has aggregate policyholders'
6 surplus of ten billion dollars (\$10,000,000,000); the trust shall
7 be in an amount equal to the group's several liabilities
8 attributable to business ceded by United States ceding insurers
9 to any member of the group under reinsurance contracts issued
10 in the name of the group. In addition, the group shall maintain a
11 joint trusteed surplus of which one hundred million dollars
12 (\$100,000,000) shall be held jointly for the benefit of United
13 States ceding insurers of any member of the group as additional
14 security for any such liabilities, and each member of the group
15 shall make available to the Commissioner an annual
16 certification of the member's solvency by the member's
17 domiciliary regulator and its independent public accountant.

18 b1. Credit for reinsurance shall not be granted under this
19 subdivision unless the form of the trust and any amendments to
20 the trust have been approved by:

- 21 1. The insurance regulator of the state where the trust is
22 domiciled; or
- 23 2. The insurance regulator of another state who, pursuant to
24 the terms of the trust instrument, has accepted principal
25 regulatory oversight of the trust.

26 b2. The form of the trust and any trust amendments also shall be
27 filed with the insurance regulator of every state in which the
28 ceding insurer beneficiaries of the trust are domiciled. The trust
29 instrument shall provide that contested claims shall be valid and
30 enforceable upon the final order of any court of competent
31 jurisdiction in the United States. The trust shall vest legal title
32 to its assets in its trustees for the benefit of the assuming
33 insurer's United States ceding insurers, their assigns, and
34 successors in interest. The trust and the assuming insurer shall
35 be subject to examination as determined by the Commissioner.

36 b3. The trust shall remain in effect for as long as the assuming
37 insurer has outstanding obligations due under the reinsurance
38 agreements subject to the trust. No later than February 28 of
39 each year, the trustees of the trust shall report to the
40 Commissioner in writing the balance of the trust, shall list the
41 trust's investments at the end of the preceding year, and shall
42 certify the date of termination of the trust, if so planned, or shall
43 certify that the trust will not expire before the following
44 December 31.

1 c. ~~The trust shall be established in a form approved by the~~
2 ~~Commissioner. The trust instrument shall provide that contested~~
3 ~~claims shall be valid and enforceable upon the final order of any~~
4 ~~court of competent jurisdiction in the United States. The trust~~
5 ~~shall vest legal title to its assets in the trustees of the trust for its~~
6 ~~United States policyholders and ceding insurers, their assigns~~
7 ~~and successors in interest. The trust and the assuming insurer~~
8 ~~shall be subject to examination as determined by the~~
9 ~~Commissioner. The trust shall remain in effect for as long as the~~
10 ~~assuming insurer has outstanding obligations due under the~~
11 ~~reinsurance agreements subject to the trust.~~

12 The following requirements apply to the following categories of
13 assuming insurer:

14 1. The trust fund for a single assuming insurer shall consist
15 of funds in trust in an amount not less than the assuming
16 insurer's liabilities attributable to reinsurance ceded by
17 United States ceding insurers, and, in addition, the
18 assuming insurer shall maintain a surplus in trust of not
19 less than twenty million dollars (\$20,000,000).

20 2. In the case of a group including incorporated and
21 individual unincorporated underwriters:

22 I. For reinsurance ceded under reinsurance
23 agreements with an inception, amendment, or
24 renewal date on or after August 1, 1995, the trust
25 shall consist of an account in trust in an amount
26 not less than the group's several liabilities
27 attributable to business ceded by United States
28 domiciled ceding insurers to any member of the
29 group.

30 II. For reinsurance ceded under reinsurance
31 agreements with an inception date on or before
32 July 31, 1995, and not amended or renewed after
33 that date, notwithstanding the other provisions of
34 this section and G.S. 58-7-26, the trust shall
35 consist of an account in trust in an amount not
36 less than the group's several insurance and
37 reinsurance liabilities attributable to business
38 written in the United States.

39 In addition to these trusts, the group shall maintain in
40 trust a surplus of which one hundred million dollars
41 (\$100,000,000) shall be held jointly for the benefit of the
42 United States domiciled ceding insurers of any member
43 of the group for all years of account. Each incorporated
44 member of the group shall not be engaged in any

1 business other than underwriting as a member of the
2 group and shall be subject to the same level of regulation
3 and solvency control by the group's domiciliary
4 insurance regulator as are the unincorporated members.
5 Within 90 days after its financial statements are due to
6 be filed with the group's domiciliary insurance regulator,
7 the group shall provide to the Commissioner an annual
8 certification by the group's domiciliary insurance
9 regulator of the solvency of each underwriter member or,
10 if a certification is unavailable, financial statements
11 prepared by independent public accountants of each
12 underwriter member of the group.

13 ~~d. No later than February 28 of each year the trustees of the trust~~
14 ~~shall report to the Commissioner in writing, setting forth the~~
15 ~~balance of the trust and listing the trust's investments at the end~~
16 ~~of the preceding year, and shall certify the date of termination~~
17 ~~of the trust, if so planned, or certify that the trust shall not~~
18 ~~expire before the next following December 31.~~

19 (5) Credit shall be allowed when the reinsurance is ceded to an assuming
20 insurer not meeting the requirements of subdivisions (1), (2), (3), or
21 (4) of this subsection, but only with respect to the insurance of risks
22 located in jurisdictions where the reinsurance is required by applicable
23 law or regulation of that jurisdiction.

24 (6) If the assuming insurer is not licensed or accredited to transact
25 insurance or reinsurance in this State, the credit permitted by
26 subdivisions (3) and (4) of this subsection shall not be allowed unless
27 the assuming insurer agrees in the reinsurance agreements:

28 a. That if the assuming insurer fails to perform its obligations
29 under the terms of the reinsurance agreement, the assuming
30 insurer, at the ceding insurer's request, shall submit to the
31 jurisdiction of any court of competent jurisdiction in any state
32 of the United States, shall comply with all requirements
33 necessary to give the court jurisdiction, and shall abide by the
34 final decision of the court or of any appellate court if there is an
35 appeal; and

36 b. To designate the Commissioner or a designated attorney as its
37 true and lawful attorney upon whom may be served any lawful
38 process in any action, suit, or proceeding begun by or on behalf
39 of the ceding company.

40 This subdivision does not affect the obligation of the parties to a
41 reinsurance agreement to arbitrate their disputes, if ~~such an~~ the
42 obligation is created in the agreement.

43 (7) If the assuming insurer does not meet the requirements of subdivision
44 (1), (2), or (3) of this subsection, the credit permitted by subdivision

1 (4) of this subsection shall not be allowed unless the assuming insurer
2 agrees in the trust agreements to the following conditions:

3 a. Notwithstanding any other provisions in the trust instrument, if
4 the trust fund is inadequate because it contains an amount less
5 than the amount required by sub-subdivision (4)c. of this
6 subsection, or if the grantor of the trust has been declared
7 insolvent or placed into receivership, rehabilitation, liquidation,
8 or similar proceedings under the laws of its state or country of
9 domicile, the trustee shall comply with an order of the public
10 official with regulatory oversight over the trust or with an order
11 of a court of competent jurisdiction directing the trustee to
12 transfer to the public official with regulatory oversight all of the
13 assets of the trust fund.

14 b. The assets shall be distributed by, and claims shall be filed with
15 and valued by, the public official with regulatory oversight in
16 accordance with the laws of the state in which the trust is
17 domiciled that are applicable to the liquidation of domestic
18 insurance companies.

19 c. If the public official with regulatory oversight determines that
20 the assets of the trust fund or any part thereof are not necessary
21 to satisfy the claims of the United States ceding insurers of the
22 grantor of the trust, those assets shall be returned by the public
23 official with regulatory oversight to the trustee for distribution
24 in accordance with the trust agreement.

25 d. The grantor shall waive any right otherwise available to it under
26 United States law that is inconsistent with this provision.

27 (c) This section applies to all reinsurance cessions made on or after January 1,
28 1992, under reinsurance agreements that have an inception, anniversary, or renewal date
29 on or after January 1, 1992."

30 **SECTION 3.2.** G.S. 58-7-26 reads as rewritten:

31 "**§ 58-7-26. Reduction-Asset or reduction from liability for reinsurance ceded by a**
32 **domestic insurer to an assuming insurer-insurer not meeting the**
33 **requirements of G.S. 58-7-21.**

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

44 (1) Cash;

- 1 (2) Securities that are listed by the Securities Valuation Office of the
2 NAIC and qualifying as admitted assets;
- 3 (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed
4 by a qualified United States financial institution, as defined in
5 subsection (b) of this section, no later than December 31 of the year
6 for which the filing is being made, and in the possession ~~of~~ of, or in
7 trust for, the ceding company on or before the filing date of its annual
8 statement. Letters of credit meeting applicable standards of issuer
9 acceptability as of the dates of their issuance (or confirmation) shall,
10 notwithstanding the issuing (or confirming) institution's subsequent
11 failure to meet applicable standards of issuer acceptability, continue to
12 be acceptable as security until their expiration, extension, renewal,
13 modification or amendment, whichever occurs first; or
- 14 (4) Any other form of security acceptable to the Commissioner.
- 15 (b) For purposes of subdivision (a)(3) of this section, a "qualified United States
16 financial institution" means an institution that:
- 17 (1) Is organized, or in the case of a United States office of a foreign
18 banking organization licensed, under the laws of the United States or
19 any of its states;
- 20 (2) Is regulated, supervised, and examined by United States federal or
21 state authorities having regulatory authority over banks and trust
22 companies; and
- 23 (3) Has been determined by either the Commissioner or the Securities
24 Valuation Office of the NAIC to meet such standards of financial
25 condition and standing as are considered necessary and appropriate to
26 regulate the quality of financial institutions whose letters of credit will
27 be acceptable to the Commissioner.
- 28 (c) A "qualified United States financial institution" means, for purposes of those
29 provisions of this section specifying those institutions that are eligible to act as a
30 fiduciary of a trust, an institution that:
- 31 (1) Is organized, or in the case of a United States branch or agency office
32 of a foreign banking organization licensed, under the laws of the
33 United States or any of its states and has been granted authority to
34 operate with fiduciary powers; and
- 35 (2) Is regulated, supervised, and examined by federal or state authorities
36 having regulatory authority over banks and trust companies.
- 37 (d) This section applies to all reinsurance cessions made on or after January 1,
38 1992, under reinsurance agreements that have an inception, anniversary, or renewal date
39 on or after January 1, 1992."

40 **SECTION 3.3.** G.S. 58-7-30 reads as rewritten:

41 "**§ 58-7-30. Insolvency of Insolvent ceding insurer; exceptions; written reinsurance**
42 **agreements; insurer.**

43 (a) Notwithstanding any other provision of this Article, no credit shall be
44 allowed, as an admitted asset or as a ~~deduction~~ reduction from liability, to any ceding

1 insurer for reinsurance, unless the reinsurance is payable by the assuming insurer, on the
2 basis of reported claims allowed by the court overseeing the liquidation against the
3 ceding insurer under the contract or contracts reinsured without diminution because of
4 the insolvency of the ceding insurer, directly to the ceding insurer or to its domiciliary
5 receiver except (1) where the contract or other written agreement specifically provides
6 for another payee of the reinsurance in the event of the insolvency of the ceding insurer
7 or (2) where the assuming insurer, with the consent of the direct insured or insureds, has
8 assumed the policy obligations of the ceding insurer as direct obligations of the
9 assuming insurer to the payees under the policies and in substitution of the obligations
10 of the ceding insurer to the payees.

11 (b) No credit shall be allowed, as an admitted asset or as a ~~deduction~~ reduction
12 from liability, to any ceding insurer for reinsurance, unless the reinsurance is
13 documented by a policy, certificate, treaty, or other form of agreement that is properly
14 executed by an authorized officer of the assuming insurer. If the reinsurance is ceded
15 through an underwriting manager or agent, the manager or agent shall provide to the
16 domestic ceding insurer evidence of the manager or agent's authority to assume
17 reinsurance for and on behalf of the assuming insurer. The evidence shall consist of
18 either an acceptable letter of authority executed by an authorized officer of the assuming
19 insurer or a copy of the actual agency agreement between the underwriting manager or
20 agent and the assuming insurer; and the evidence shall be specific as to the classes of
21 business within the authority and as to the term of the authority. If there is any conflict
22 between this subsection and Article 9 of this Chapter, the provisions of Article 9 govern.

23 (c) The reinsurance agreement may provide that the domiciliary liquidator of an
24 insolvent ceding insurer shall give written notice to the assuming insurer of the
25 pendency of a claim against the ceding insurer on the contract reinsured within a
26 reasonable time after the claim is filed in the liquidation proceeding. During the
27 pendency of the claim, any assuming insurer may investigate the claim and interpose at
28 its own expense in the proceeding where the claim is to be adjudicated, any defenses
29 which it deems available to the ceding insurer or its liquidator. The expense may be
30 filed as a claim against the insolvent ceding insurer to the extent of a proportionate
31 share of the benefit which may accrue to the ceding insurer solely as a result of the
32 defense undertaken by the assuming insurer. Where two or more assuming insurers are
33 involved in the same claim and a majority in interest elect to interpose a defense to the
34 claim, the expense shall be apportioned in accordance with the terms of the reinsurance
35 agreement as though the expense had been incurred by the ceding insurer."

36 **SECTION 3.4.** G.S. 58-7-31(c) reads as rewritten:

37 "(c) Notwithstanding subsection ~~(a)~~(b) of this section, an insurer may, with the
38 prior approval of the Commissioner, take such reserve credit or establish such asset as
39 the Commissioner deems to be consistent with the insurance laws or rules of this State,
40 including actuarial interpretations or standards adopted by the Commissioner."

41 **SECTION 3.5.** G.S. 58-7-31(d)(1) reads as rewritten:

42 "(1) Reinsurance agreements entered into after October 1, 1993, that involve the
43 reinsurance of business issued prior to the effective date of the
44 reinsurance agreements, along with any subsequent amendments

1 thereto, shall be filed by the ceding company with the Commissioner
2 within 30 days after its date of execution. Each filing shall include data
3 detailing the ~~final~~-financial impact of the transaction. The ceding
4 insurer's actuary who signs the financial statement actuarial opinion
5 with respect to valuation of reserves shall consider this statute and any
6 applicable actuarial standards of practice when determining the proper
7 credit in financial statements filed with the Commissioner. The actuary
8 should maintain adequate documentation and be prepared upon request
9 to describe the actuarial work performed for inclusion in the financial
10 statements and to demonstrate that such work conforms to this statute."

11 **SECTION 3.6.** G.S. 58-57-85 is repealed.

12 **SECTION 3.7.** Sections 3.1 and 3.2 of this act apply to all reinsurance
13 cessions made on or after January 1, 2002, under reinsurance agreements that have an
14 inception, anniversary, or renewal date on or after January 1, 2002. The remainder of
15 this part is effective when it becomes law.

16 **PART IV. DOMESTIC COMPANY FORMATION AND RELOCATION.**

17 **SECTION 4.1.** Article 7 of Chapter 58 of the General Statutes is amended
18 by adding the following new section to read:

19 "**§ 58-7-37. Background of incorporators and proposed management personnel.**

20 (a) Before a license is issued to a new domestic insurance company, each key
21 person must furnish the Commissioner a complete set of the applicant's fingerprints and
22 a recent passport size full-face photograph of the applicant. The applicant's fingerprints
23 shall be certified by an authorized law enforcement officer. The fingerprints of every
24 applicant shall be forwarded to the State Bureau of Investigation for a search of the
25 applicant's criminal history record file, if any. If warranted, the State Bureau of
26 Investigation shall forward a set of the fingerprints to the Federal Bureau of
27 Investigation for a national criminal history record check. An applicant shall pay the
28 cost of the State and any national criminal history record check of the applicant.
29

30 (b) As used in this section, 'key person' means a proposed officer, director, or
31 any other individual who will be in a position to influence the operating decisions of a
32 domestic insurance company.

33 (c) The Commissioner may refuse to approve the formation or initial license of a
34 new domestic insurance company under this Article if, after notice to the applicant and
35 an opportunity for a hearing, the Commissioner finds as to the incorporators or other
36 key person any one or more of the following conditions:

- 37 (1) Any untrue material statement regarding the background or experience
38 of any incorporator or other key person;
39 (2) Violation of, or noncompliance with, any insurance laws, or of any
40 rule or order of the Commissioner or of a commissioner of another
41 state by any incorporator or other key person;
42 (3) Obtaining or attempting to obtain the license through
43 misrepresentation or fraud;
44 (4) An incorporator or other key person has been convicted of a felony;

1 (5) An incorporator or other key person has been found to have committed
2 any unfair trade practice or fraud;

3 (6) An incorporator or other key person has used fraudulent, coercive, or
4 dishonest practices, or has acted in a manner that is incompetent,
5 untrustworthy, or financially irresponsible; or

6 (7) An incorporator or other key person has held such a position in another
7 insurance company that has had its license suspended or revoked by
8 any state.

9 (d) If the Commissioner disapproves of the formation or initial license, the
10 Commissioner shall notify the applicant and advise the applicant in writing of the
11 reasons for the disapproval. Within 30 days after receipt of notification, the applicant
12 may make written demand upon the Commissioner for a hearing to determine the
13 reasonableness of the Commissioner's action. The hearing shall be scheduled within 30
14 days after the date of receipt of the written demand.

15 (e) For the purposes of investigation under this section, the Commissioner shall
16 have all the power conferred by G.S. 58-2-50 and other applicable provisions of this
17 Chapter.

18 (f) The Commissioner may adopt rules to set standards for obtaining background
19 information on each incorporator or other key person of a proposed new domestic
20 insurance company."

21 **SECTION 4.2.** G.S. 58-7-70 reads as rewritten:

22 "**§ 58-7-70. Effects of redomestication.**

23 The license agent appointments and licenses, rates, and other items that the
24 Commissioner authorizes or grants, in his discretion, that are in existence at the time
25 any insurer licensed to ~~transact the business of insurance in this State by the~~
26 Commissioner transfers its corporate domicile to this or any other state by merger,
27 consolidation, or any other lawful method, shall continue in full force and effect upon
28 ~~such the~~ transfer if ~~such the~~ insurer remains duly licensed to ~~transact the business of~~
29 insurance in this State by the Commissioner. All outstanding policies of any transferring
30 insurer shall remain in full force and effect and need not be endorsed as to any new
31 name of the insurer or its new location unless so ordered by the Commissioner. Every
32 transferring insurer shall file new policy forms with the Commissioner on or before the
33 effective date of the transfer, but may use existing policy forms with appropriate
34 endorsements if allowed by, and under such conditions as approved by, the
35 Commissioner: Provided, however, every such transferring insurer shall (i) notify the
36 Commissioner of the details of the proposed transfer and (ii) promptly file any resulting
37 amendments to corporate documents filed or required to be filed with the
38 Commissioner."
39

40 **PART V. INSURANCE COMPANY SOLVENCY PROTECTION.**

41 **SECTION 5.1.** G.S. 58-7-75(10) reads as rewritten:

42 "(10) Impairment of Capital and/or Surplus. – Whenever the Commissioner
43 finds from a financial statement made by any company, or from a
44 report of examination of any company, that its admitted assets are less

1 than the aggregate amount of its liabilities and its outstanding capital
2 ~~stock and/or stock,~~ required minimum surplus, or both, the
3 Commissioner shall ~~determine~~ determine, in accordance with G.S. 58-
4 2-165 and other applicable provisions of this Chapter, the amount of
5 the impairment of ~~capital and/or surplus~~ capital, surplus, or both and
6 issue an order in writing requiring the company to eliminate the
7 impairment within such period of not more than 90 days as the
8 Commissioner shall designate. The Commissioner may, by order
9 served upon the company, prohibit the company from issuing any new
10 policies while the impairment exists. If at the expiration of the
11 designated period the company has not satisfied the Commissioner that
12 the impairment has been eliminated, an order for the rehabilitation or
13 liquidation of the company may be entered as provided in Article 30 of
14 this Chapter."

15 **SECTION 5.2.** G.S. 58-7-130 reads as rewritten:

16 "**~~§ 58-7-130. Payment of dividends impairing financial soundness of company or~~**
17 **~~detrimental to policyholders.~~Dividends and distributions to stockholders.**

18 (a) Each domestic insurance company in North Carolina shall be restricted by the
19 Commissioner from the payment of any dividends or other distributions to its
20 stockholders whenever the Commissioner determines from examination of ~~such~~ the
21 company's financial condition that the payment of future dividends or other distributions
22 would cause a hazardous financial condition, impair the financial soundness of the
23 company or be detrimental to its policyholders, and ~~such~~ those restrictions shall
24 continue in force until ~~such future date~~ when the Commissioner may specifically permit
25 permits the payment of dividends or other distributions to stockholders by the company
26 through a written authorization. ~~Nothing contained in this section and no action taken by~~
27 ~~the Commissioner shall in any way restrict the liability of stockholders under G.S. 58-7-~~
28 ~~125.~~

29 (b) No domestic stock insurance company shall declare dividends to its
30 stockholders except from the unassigned surplus of the company as reflected in the
31 company's most recent financial statement filed with the Commissioner under G.S. 58-
32 2-165.

33 (c) A transfer out of paid-in and contributed surplus to common or preferred
34 capital stock will be permitted on a case-by-case basis, with the Commissioner's prior
35 approval, depending on the necessity for a company to make the transfer.

36 (d) Nothing in this section and no action taken by the Commissioner in any way
37 restricts the liability of stockholders under G.S. 58-7-125.

38 (e) Dividends and other distributions paid to stockholders are subject to the
39 requirements and limitations of G.S. 58-19-25(d) and G.S. 58-19-30(c)."

40 **PART VI. LIFE INSURANCE COMPANY VARIABLE ACCOUNTS.**

41 **SECTION 6.1.** G.S. 58-7-95(b) reads as rewritten:

42 (b) Any domestic life insurance company may, pursuant to resolution of its board
43 of directors, establish one or more separate accounts and may allocate to such account
44

1 or accounts amounts ~~received or retained in connection with variable contracts~~
2 (including without limitation proceeds applied under optional modes of settlement or
3 under dividend options) to provide for life ~~insurance~~insurance, guaranteed investment
4 contracts, or annuities (and benefits incidental thereto) payable in fixed or variable
5 amounts or both."

6 **SECTION 6.2.** G.S. 58-7-95(c) reads as rewritten:

7 "(c) In addition to the amounts allocated under subsection (b), such company may
8 allocate from its general accounts to such separate account or accounts additional
9 amounts, which may include an initial allocation to establish such account; provided,
10 ~~that the aggregate amount so allocated shall not exceed one per centum (1%) of its~~
11 ~~admitted assets as of the preceding December 31, or one million dollars (\$1,000,000),~~
12 ~~whichever is less, and, provided further,~~ that such company shall be entitled to withdraw
13 at any time, in whole or in part, its participation in any separate account to which funds
14 have been allocated as provided in this subsection (c), and to receive, upon withdrawal,
15 its proportionate share of the value of the assets of the separate account at the time of
16 withdrawal."

17 **SECTION 6.3.** G.S. 58-7-95(e) and G.S. 58-7-95(f) are repealed.

18 **SECTION 6.4.** G.S. 58-7-95(g) reads as rewritten:

19 "(g) ~~The limitations provided in subsections (e) and (f) above shall not apply to~~
20 ~~the investment with respect to a separate account in the securities of an investment~~
21 ~~company registered under the Investment Company Act of 1940, provided that the~~
22 ~~investments of such investment company comply in substance with subsections (e) and~~
23 ~~(f) hereof.~~The life insurance company shall maintain in each separate account assets
24 with a value at least equal to the reserves and other contract liabilities with respect to the
25 account, except as may otherwise be approved by the Commissioner."

27 PART VII. INSURANCE COMPANY CONSOLIDATION.

28 **SECTION 7.1.** G.S. 58-7-150(a) reads as rewritten:

29 "(a) A domestic insurer may consolidate with another insurer, subject to the
30 following conditions:

- 31 (1) The plan of consolidation must be submitted to and be approved by the
32 Commissioner ~~in advance of~~before the consolidation.
- 33 (2) The Commissioner shall not approve ~~any such plan unless, after a~~
34 ~~hearing, he~~the plan unless the Commissioner finds that it is fair,
35 equitable to policyholders, consistent with law, and will not conflict
36 with the public interest. If the Commissioner ~~fails to approve~~
37 ~~disapproves~~ the plan, ~~he~~the Commissioner shall state his the reasons
38 for such failure ~~in his order made on such hearing.~~the disapproval and
39 call for a hearing.
- 40 (3) No director, officer, member or subscriber of any such insurer, except
41 as is expressly provided by the plan of consolidation, shall receive any
42 fee, commission, other compensation or valuable consideration
43 whatever, for in any manner aiding, promoting or assisting in the
44 consolidation.

- 1 (4) Any consolidation as to an incorporated domestic insurer shall in other
2 respects be governed by the general laws of this State relating to
3 business corporations, ~~except that the corporations.~~ The consolidation
4 of a domestic mutual insurer may be effected by vote of two thirds of
5 the members voting thereon pursuant to such notice and procedure as
6 the Commissioner may prescribe."

7 **SECTION 7.2.** G.S. 58-7-150(b) reads as rewritten:

8 "(b) Reinsurance of all or substantially all of the insurance ~~in force obligations or~~
9 ~~risks of existing or in-force policies~~ of a domestic insurer by another insurer under an
10 ~~agreement whereby the reinsuring company succeeds to all of the liabilities of and~~
11 ~~supplants the domestic insurance company thereon~~ assumption reinsurance agreement,
12 as defined in G.S. 58-10-25(a)(2), shall be deemed a consolidation for the purposes of
13 this section. This section does not apply to consolidations to the extent regulated by
14 Article 19 or other Articles of this Chapter."

15
16 **PART VIII. INSURANCE COMPANY INVESTMENTS.**

17 **SECTION 8.1.** G.S. 58-7-170(b) reads as rewritten:

18 "(b) Investments eligible under subsection (a), except investments acquired under
19 G.S. 58-7-183, are subject to the following ~~limitations:~~ limitations, other limitations of
20 this section, and any other limitations that are expressly provided for in any provision
21 under which the investment is authorized:

- 22 (1) The cost of investments made by insurers in stock authorized by G.S.
23 58-7-173 shall not exceed twenty-five percent (25%) of the insurer's
24 admitted assets, provided that no more than twenty percent (20%) of
25 the insurer's admitted assets shall be invested in common stock; and
26 the cost of an investment in stock of any one corporation shall not
27 exceed three percent (3%) of the insurer's admitted assets.
28 Notwithstanding any other provision in this Chapter, the financial
29 statement carrying value of all stock investments shall be used for the
30 purpose of determining the asset value against which the percentage
31 limitations are to be applied.

- 32 (2) ~~Other limitations, if any, that are expressly provided for in any~~
33 ~~provision under which the investment is authorized.~~ The cost of
34 Canadian investments authorized by G.S. 58-7-173 shall not exceed
35 forty percent (40%) of the insurer's admitted assets in the aggregate,
36 provided that no more than twenty-five percent (25%) of the insurer's
37 admitted assets shall be invested in Canadian investments authorized
38 by G.S. 58-7-173(11)."

39 **SECTION 8.2.** G.S. 58-7-170(d) reads as rewritten:

40 "(d) Without the Commissioner's prior written approval, the cost of investments ~~in~~
41 ~~bonds, debentures, notes, commercial paper, or other debt obligations issued, assumed,~~
42 ~~or guaranteed by any solvent United States institution, any state, Canada, or any~~
43 ~~Canadian province, permitted under G.S. 58-7-173 and G.S. 58-7-178,~~ and that are
44 classified as medium to lower quality obligations, other than obligations of subsidiaries

1 or affiliated corporations as that term is defined in ~~G.S. 58-7-177~~, G.S. 58-19-5, shall be
2 limited to:

- 3 (1) No more than twenty percent (20%) of an insurer's admitted assets;
- 4 (2) No more than ten percent (10%) of an insurer's admitted assets in
5 obligations that have been given a rating of 4, 5, or 6 by the Securities
6 Valuation Office of the NAIC;
- 7 (3) No more than three percent (3%) of an insurer's admitted assets in
8 obligations that have been given a rating of 5 or 6 by the Securities
9 Valuation Office of the NAIC; and
- 10 (4) No more than one percent (1%) of an insurer's admitted assets in
11 obligations that have been given a rating of 6 by the Securities
12 Valuation Office of the NAIC.
- 13 (5), (6) Repealed by Session Laws 1993, c. 452, s. 11."

14 **SECTION 8.3.** G.S. 58-7-173(9) reads as rewritten:

15 "(9) Bonds, debentures, or other securities of public housing authorities,
16 issued under the Housing Act, of 1949, the Municipal Housing
17 Commission Act, or the Rural Housing Commission Act, or issued by
18 any public housing authority or agency in the United States, if the
19 bonds, debentures, or other securities are secured by a pledge of annual
20 contributions to be paid by the United States or any United States
21 agency; ~~and the cost of investments made under this subdivision shall~~
22 ~~not exceed the lesser of three percent (3%) of the insurer's admitted~~
23 ~~assets or ten percent (10%) of the insurer's capital and surplus.~~agency."

24 **SECTION 8.4.** G.S. 58-7-173(10) reads as rewritten:

25 "(10) Obligations issued, assumed, or guaranteed by the International Bank
26 for Reconstruction and Development, the International Finance
27 Corporation, the Inter-American Development Bank, the Asian
28 Development Bank, or the African Development Bank; and the cost of
29 investments made under this subdivision in any one institution shall
30 not exceed ~~the lesser of~~ three percent (3%) of the insurer admitted
31 ~~assets or ten percent (10%) of the insurer's capital and surplus.~~assets."

32 **SECTION 8.5.** G.S. 58-7-173(11) reads as rewritten:

33 "(11) Bonds, notes, or other interest-bearing or interest-accruing obligations
34 of any solvent institution organized under the laws of the United
35 States, of any state, Canada or any Canadian province; provided such
36 instruments are rated and valued by the Securities Valuation Office of
37 the NAIC. The cost of investments made under this subdivision in
38 ~~issuers from any one industry shall not exceed ten percent (10%) of an~~
39 ~~insurer's admitted assets, and the cost of investments made in any one~~
40 ~~issuer shall not exceed three percent (3%) of an insurer's admitted~~
41 ~~assets or ten percent (10%) of an insurer's capital and surplus,~~
42 ~~whichever is greater. As used in this subdivision, "industry" means a~~
43 ~~distinct and recognized area of economic activity that consists of the~~

~~production, manufacture, or distribution of common goods, products, commodities, or services/assets."~~

SECTION 8.6. G.S. 58-7-173(12) reads as rewritten:

"(12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed ~~the lesser of one percent (1%) three percent (3%)~~ of the insurer's admitted assets ~~or five percent (5%) of the insurer's capital and surplus/assets."~~

SECTION 8.7. G.S. 58-7-173(14) reads as rewritten:

"(14) Share or savings accounts of savings and loan associations or building and loan associations; ~~and the cost of investments made under this subdivision shall not exceed the lesser of three percent (3%) of the insurer's admitted assets or five percent (5%) of the insurer's capital and surplus/associations."~~

SECTION 8.8. G.S. 58-7-173(16) reads as rewritten:

"(16) Stocks, common or preferred, of any corporation created or existing under the laws of the United States, any U.S. territory, Canada or any Canadian province, or of any state. An insurer may invest in stocks, common or preferred, of any corporation created or existing under the laws of any foreign country other than Canada ~~if the stocks are listed and traded on a national securities exchange in the United States or if the investment in stocks of any corporation created or existing under the laws of any foreign country are first approved by the Commissioner. Nothing in this section applies to qualifying investments made by an insurer in a foreign country under authority of G.S. 58-7-178; subject to the provisions of G.S. 58-7-178."~~

SECTION 8.9. G.S. 58-7-177 is repealed.

SECTION 8.10. G.S. 58-23-26(c) reads as rewritten:

"(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, ~~58-7-177,~~ 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

SECTION 8.11. G.S. 58-7-178 reads as rewritten:

"§ 58-7-178. **Foreign or territorial investments.**

(a) An insurer authorized to transact insurance in a foreign country or any U.S. territory may have funds invested in securities that may be required for that authority and for the transaction of that ~~business/business,~~ provided the funds and securities are substantially of the same kinds, classes, and investment grades as those otherwise eligible for investment under this Chapter. ~~Canadian securities eligible for investment~~

1 under other provisions of this Chapter are not subject to this section. Unless disapproved
2 by the Commissioner:

3 (1) ~~An insurer may invest in Eurodollar certificates of deposit issued by~~
4 ~~foreign branches of United States commercial banks.~~

5 (2) ~~In addition to Canadian securities eligible for investment and to~~
6 ~~investments in countries in which an insurer transacts insurance, an~~
7 ~~insurer may invest in bonds, notes, or stocks of any foreign country or~~
8 ~~alien corporation if the security meets the general requirements of G.S.~~
9 ~~58-7-167 and does not exceed, in total, five percent (5%) of admitted~~
10 ~~assets.~~

11 The aggregate amount of investments under this subsection shall not exceed the amount
12 that the insurer is required by law to invest in the foreign country or United States
13 territory, or one and one-half times the amount of reserves and other obligations under
14 the contracts, whichever is greater.

15 (b) An insurer, whether or not it is authorized to do business or has outstanding
16 insurance contracts on lives or risks in any foreign country, may invest in bonds, notes,
17 or stocks of any foreign country or alien corporation that are substantially of the same
18 kinds, classes, and investment grades as those otherwise eligible for investment under
19 this Chapter. The aggregate amount of investments under this subsection shall not
20 exceed ten percent (10%) of the insurer's admitted assets, provided that the cost of
21 investments in any foreign country under this subsection shall not exceed one percent
22 (1%) of the insurer's admitted assets.

23 (c) Canadian securities eligible for investment under other provisions of this
24 Chapter are not subject to this section."

25 **SECTION 8.12.** G.S. 58-7-185(a)(2) reads as rewritten:

26 "(2) Except with the Commissioner's consent, securities issued by any
27 corporation or enterprise, the controlling interest of which is or will
28 after acquisition by the insurer be held directly or indirectly by the
29 insurer or any combination of the insurer and the insurer's directors,
30 officers, parent corporation, subsidiaries, or controlling stockholders.
31 Investments in subsidiaries under ~~G.S. 58-7-177~~ G.S. 58-19-10 are not
32 subject to this provision."

33 **SECTION 8.13.** G.S. 58-7-185(a)(3) is repealed.

34 **SECTION 8.14.** G.S. 58-7-192(d) reads as rewritten:

35 "(d) No valuations under this section shall be greater than any applicable valuation
36 or method contained in the latest edition of the NAIC ~~publication~~ publications entitled
37 'Valuations of ~~Securities~~', Securities or the 'Accounting Practices and Procedures
38 Manual', unless the Commissioner determines that another valuation method is
39 appropriate when it results in a more conservative valuation."

40 **SECTION 8.15.** G.S. 58-7-200(b) reads as rewritten:

41 "(b) ~~Notwithstanding any expressed or implied prohibitions, an insurer may effect~~
42 ~~or maintain bona fide hedging transactions pertaining to securities otherwise eligible for~~
43 ~~investment under this section, including, but not limited to (i) financial futures~~
44 ~~contracts, warrants, options, calls and other rights to purchase; and (ii) puts and other~~

1 ~~rights to require another person to purchase the securities. The contracts, options, calls,~~
2 ~~puts and rights shall be traded on a securities exchange or board of trade regulated under~~
3 ~~the laws of the United States. For the purposes of this subsection, "bona fide hedging~~
4 ~~transaction" means a purchase or sale of such a contract, warrant, option, call, put or~~
5 ~~right, entered into for the purpose of offsetting changes in the market value of a security~~
6 ~~held by the company. An insurer may engage in derivative transactions under the~~
7 ~~provisions and limitations of G.S. 58-7-205."~~

8 **SECTION 8.16.** G.S. 58-7-200(c) reads as rewritten:

9 "(c) ~~No insurer shall make any direct or indirect loan to any of its directors,~~
10 ~~officers, or controlling stockholders; nor shall the insurer make any loan to any other~~
11 ~~person in which the officer, director, or stockholder is substantially interested; nor shall~~
12 ~~any such director, officer, or stockholder directly or indirectly accept any such loan. No~~
13 ~~insurer shall directly or indirectly invest in, or lend its funds to, any of its directors,~~
14 ~~officer, controlling stockholders, or any other person in which an officer, director, or~~
15 ~~controlling stockholder is substantially interested, nor shall any director, officer, or~~
16 ~~controlling stockholder directly or indirectly accept the funds."~~

17 **SECTION 8.17.** Article 7 of Chapter 58 of the General Statutes is amended
18 by adding the following new section to read:

19 "**§ 58-7-205. Derivative transactions.**

20 (a) As used in this section, the following terms have the following meanings:

21 (1) 'Business entity' includes a sole proprietorship, corporation, limited
22 liability company, association, partnership, joint stock company, joint
23 venture, mutual fund, trust, joint tenancy or other similar form of
24 business organization, whether for-profit or not-for-profit.

25 (2) 'Counterparty exposure amount' means:

26 a. The amount of credit risk attributable to a derivative instrument
27 entered into with a business entity other than through a
28 qualified exchange, qualified foreign exchange, or cleared
29 through a qualified clearinghouse ('over-the-counter derivative
30 instrument'). The amount of credit risk equals:

31 1. The market value of the over-the-counter derivative
32 instrument if the liquidation of the derivative instrument
33 would result in a final cash payment to the insurer; or

34 2. Zero if the liquidation of the derivative instrument would
35 not result in a final cash payment to the insurer.

36 b. If over-the-counter derivative instruments are entered into under
37 a written master agreement which provides for netting of
38 payments owed by the respective parties and the domicile of the
39 counterparty is either within the United States or, if not within
40 the United States, within a foreign jurisdiction listed in the
41 Purposes and Procedures of the Securities Valuation Office of
42 the NAIC as eligible for netting, the net amount of credit risk
43 shall be the greater of zero or the net sum of:

- 1 1. The market value of the over-the-counter derivative
2 instruments entered into under the agreement, the
3 liquidation of which would result in a final cash payment
4 to the insurer; and
5 2. The market value of the over-the-counter derivative
6 instruments entered into under the agreement, the
7 liquidation of which would result in a final cash payment
8 by the insurer to the business entity.
9 c. For open transactions, market value shall be determined at the
10 end of the most recent quarter of the insurer's fiscal year and
11 shall be reduced by the market value of acceptable collateral
12 held by the insurer or placed in escrow by one or both parties.
13 (3) 'Derivative instrument' means an agreement, option, instrument, or a
14 series or combination thereof:
15 a. To make or take delivery of, or assume or relinquish, a
16 specified amount of one or more underlying interests, or to
17 make a cash settlement in lieu thereof; or
18 b. That has a price, performance, value, or cash flow based
19 primarily upon the actual or expected price level, performance,
20 value, or cash flow of one or more underlying interests.
21 Derivative instruments include options, warrants used in a hedging
22 transaction and not attached to another financial instrument, caps,
23 floors, collars, swaps, forwards, futures, and any other agreements,
24 options, or instruments substantially similar thereto or any series or
25 combination thereof. Derivative instruments shall additionally include
26 any agreements, options, or instruments permitted under rules adopted
27 under subsection (c) of this section. Derivative instruments shall not
28 include an investment authorized by G.S. 58-7-173, 58-7-175, 58-7-
29 178, 58-7-179, 58-7-180, and 58-7-187.
30 (4) 'Derivative transaction' means any transaction involving the use of
31 one or more derivative instruments.
32 (5) 'Qualified clearinghouse' means a clearinghouse for, and subject to the
33 rules of, a qualified exchange or a qualified foreign exchange. The
34 clearinghouse provides clearing services, including acting as a
35 counterparty to each of the parties to a transaction such that the parties
36 no longer have credit risk as to each other.
37 (6) 'Qualified exchange' means:
38 a. A securities exchange registered as a national securities
39 exchange, or a securities market regulated under the Securities
40 Exchange Act of 1934 (15 U.S.C. §§ 78, et seq.), as amended;
41 b. A board of trade or commodities exchange designated as a
42 contract market by the Commodity Futures Trading
43 Commission, or any successor thereof;

- 1 c. Private Offerings, Resales and Trading through Automated
2 Linkages (PORTAL);
- 3 d. A designated offshore securities market as defined in Securities
4 Exchange Commission Regulation S, 17 C.F.R. Part 230, as
5 amended; or
- 6 e. A qualified foreign exchange.
- 7 (7) 'Qualified foreign exchange' means a foreign exchange, board of
8 trade, or contract market located outside the United States, its
9 territories or possessions:
- 10 a. That has received regulatory comparability relief under
11 Commodity Futures Trading Commission Rule 30.10 (as set
12 forth in Appendix C to Part 30 of the CFTC's Regulations, 17
13 C.F.R. Part 30);
- 14 b. That is, or its members are, subject to the jurisdiction of a
15 foreign futures authority that has received regulatory
16 comparability relief under Commodity Futures Trading
17 Commission Rule 30.10 (as set forth in Appendix C to Part 30
18 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures
19 transactions in the jurisdiction where the exchange, board of
20 trade, or contract market is located; or
- 21 c. Upon which foreign stock index futures contracts are listed that
22 are the subject of no-action relief issued by the CFTC's Office
23 of General Counsel, but an exchange, board of trade, or contract
24 market that qualifies as a 'qualified foreign exchange' only
25 under this paragraph shall only be a 'qualified foreign
26 exchange' as to foreign stock index futures contracts that are
27 the subject of the no-action relief under this paragraph.
- 28 (8) 'Replication transaction' means a derivative transaction that is
29 intended to replicate the investment in one or more assets that an
30 insurer is authorized to acquire or sell under this section or G.S. 58-7-
31 165. A derivative transaction that is entered into as a hedging
32 transaction shall not be considered a replication transaction.
- 33 (b) An insurer may, directly or indirectly through an investment subsidiary,
34 engage in derivative transactions under this section under the following conditions:
- 35 (1) An insurer may use derivative instruments under this section to engage
36 in hedging transactions and certain income generation transactions as
37 may be further defined by rules adopted by the Commissioner.
- 38 (2) An insurer shall be able to demonstrate to the Commissioner the
39 intended hedging characteristics and the ongoing effectiveness of the
40 derivative transaction or combination of the transactions through cash
41 flow testing or other appropriate analyses.
- 42 (c) The Commissioner may adopt reasonable rules for investments and
43 transactions under this section including, but not limited to, rules which impose
44 financial solvency standards, valuation standards, and reporting requirements.

1 (d) An insurer may enter into hedging transactions under this section if, as a
2 result of and after giving effect to the transaction:

3 (1) The aggregate statement value of options, caps, floors, and warrants
4 not attached to another financial instrument purchased and used in
5 hedging transactions then engaged in by the insurer does not exceed
6 seven and one-half percent (7.5%) of its admitted assets;

7 (2) The aggregate statement value of options, caps, and floors written in
8 hedging transactions then engaged in by the insurer does not exceed
9 three percent (3%) of its admitted assets; and

10 (3) The aggregate potential exposure of collars, swaps, forwards, and
11 futures used in hedging transactions then engaged in by the insurer
12 does not exceed six and one-half percent (6.5%) of its admitted assets.

13 (e) An insurer may enter into the following types of income generation
14 transactions if, as a result of and after giving effect to the transactions, the aggregate
15 statement value of the fixed income assets that are subject to call or that generate the
16 cash flows for payments under the caps or floors, plus the face value of fixed income
17 securities underlying a derivative instrument subject to call, plus the amount of the
18 purchase obligations under the puts, does not exceed ten percent (10%) of its admitted
19 assets:

20 (1) Sales of covered call options on noncallable fixed income securities,
21 callable fixed income securities if the option expires by its terms
22 before the end of the noncallable period, or derivative instruments
23 based on fixed income securities;

24 (2) Sales of covered call options on equity securities, if the insurer holds
25 in its portfolio, or can immediately acquire through the exercise of
26 options, warrants, or conversion rights already owned, the equity
27 securities subject to call during the complete term of the call option
28 sold;

29 (3) Sales of covered puts on investments that the insurer is permitted to
30 acquire under this Chapter, if the insurer has escrowed, or entered into
31 a custodian agreement segregating, cash or cash equivalents with a
32 market value equal to the amount of its purchase obligations under the
33 put during the complete term of the put option sold; or

34 (4) Sales of covered caps or floors, if the insurer holds in its portfolio the
35 investments generating the cash flow to make the required payments
36 under the caps or floors during the complete term that the cap or floor
37 is outstanding.

38 (f) An insurer shall include all counterparty exposure amounts in determining
39 compliance with the limitations of G.S. 58-7-170.

40 (g) Under rules that may be adopted by the Commissioner, additional
41 transactions involving the use of derivative instruments in excess of the limits of
42 subsection (d) of this section or for other risk management purposes may be approved
43 by the Commissioner.

44 (h) An insurer shall establish guidelines and internal procedures as follows:

- 1 (1) Before engaging in a derivative transaction, an insurer shall establish
2 written guidelines that shall be used for effecting and maintaining the
3 transactions. The guidelines shall:
- 4 a. Address investment or, if applicable, underwriting objectives,
5 and risk constraints such as credit risk limits;
- 6 b. Address permissible transactions and the relationship of those
7 transactions to its operations, such as a precise identification of
8 the risks being hedged by a derivative transaction; and
- 9 c. Require compliance with internal control procedures.
- 10 (2) An insurer shall have a system for determining whether a derivative
11 instrument used for hedging has been effective.
- 12 (3) An insurer shall have a credit risk management system for over-the-
13 counter derivative transactions that measures credit risk exposure
14 using the counterparty exposure amount.
- 15 (4) An insurer's board of directors shall, in accordance with G.S. 58-7-
16 168:
- 17 a. Approve the guidelines required by subdivision (1) of this
18 subsection and the systems required by subdivisions (2) and (3)
19 of this subsection; and
- 20 b. Determine whether the insurer has adequate professional
21 personnel, technical expertise and systems to implement
22 investment practices involving derivatives.
- 23 (i) An insurer shall maintain documentation and records relating to each
24 derivative transaction, such as:
- 25 (1) The purpose or purposes of the transaction;
- 26 (2) The assets or liabilities to which the transaction relates;
- 27 (3) The specific derivative instrument used in the transaction;
- 28 (4) For over-the-counter derivative instrument transactions, the name of
29 the counterparty and counterparty exposure amount; and
- 30 (5) For exchange-traded derivative instruments, the name of the exchange
31 and the name of the firm that handled the trade.
- 32 (j) Each derivative instrument shall be:
- 33 (1) Traded on a qualified exchange;
- 34 (2) Entered into with, or guaranteed by, a business entity;
- 35 (3) Issued or written by or entered into with the issuer of the underlying
36 interest on which the derivative instrument is based; or
- 37 (4) Entered into with a qualified foreign exchange."

38 **SECTION 8.18.** G.S. 58-67-60 reads as rewritten:

39 "**§ 58-67-60. Investments.**

40 With the exception of investments made in accordance with G.S. 58-67-35(a)(1) and
41 (2) and G.S. 58-67-35(b), the ~~investable~~ funds of a health maintenance organization
42 shall be invested or maintained only in ~~securities or securities~~, other ~~investments~~
43 investments, or other assets permitted by the laws of this State for the investment of

1 assets constituting the legal reserves of life insurance companies or such other securities
2 or investments as the Commissioner may permit."

3
4 **PART IX. MUTUAL INSURANCE COMPANIES.**

5 **SECTION 9.1.** G.S. 58-8-5(a)(3) reads as rewritten:

6 "(3) ~~Said officers shall cause said certificate to be published once a week~~
7 ~~for two consecutive weeks in a newspaper in Raleigh and in the county~~
8 ~~where the company's principal office is located, or posted at the~~
9 ~~courthouse door if no newspaper be published within the county. Said~~
10 ~~printed or posted notices shall be in such form and of such size as the~~
11 ~~Commissioner may approve, and in addition to setting forth in full the~~
12 ~~certificate required in subdivision (2) shall state that application for~~
13 ~~amending the company's charter in the manner specified has been~~
14 ~~proposed by the board of directors, and shall also state the time set for~~
15 ~~a meeting of policyholders thereby called to be held at the principal~~
16 ~~office of the company to take action on the proposed amendment. A~~
17 ~~true copy of such notice shall be filed with the Commissioner, and also~~
18 ~~with that official who performs the functions of Commissioner in each~~
19 ~~state where the company is licensed to do business. Such publication~~
20 ~~and filing of notices shall be completed at least 30 days prior to the~~
21 ~~date set therein for the meeting of policyholders and due proof thereof~~
22 ~~shall be filed with the Commissioner at least 15 days prior to the date~~
23 ~~of such meeting. If the meeting at which the proposed amendment is to~~
24 ~~be considered is a special meeting, rather than a regular annual~~
25 ~~meeting of policyholders, such special meeting can be called only after~~
26 ~~the Commissioner has given his approval in writing, and the published~~
27 ~~notice shall show the fact of such approval; writing;"~~

28 **SECTION 9.2.** G.S. 58-8-25 reads as rewritten:

29 **"§ 58-8-25. Dividends to policyholders.**

30 (a) Any participating or dividend-paying company, stock or mutual or foreign or
31 domestic, that writes other than life insurance or workers' compensation insurance and
32 employers' liability insurance in connection therewith, may declare and pay a dividend
33 to policyholders from its surplus, unassigned surplus, as reflected in the company's most
34 recent annual or quarterly statement filed with the Commissioner under G.S. 58-2-165,
35 which shall include only its surplus in excess of any required minimum surplus. No
36 such dividend shall be paid unless it is fair and equitable and for the best interest of the
37 company and its policyholders. In declaring any dividend to its policyholders, any such
38 company may make reasonable classifications of policies expiring during a fixed period,
39 upon the basis of each general kind of insurance covered by ~~such those~~ policies and by
40 territorial divisions of the location of risks by states, except that in fixing the amount of
41 dividends to be paid on each general kind of insurance, ~~which the~~ dividends shall be
42 uniform in rate and applicable to the majority of risks within ~~such that~~ general kind of
43 insurance, and exceptions may be made as to any class or classes of risk and a different
44 rate or amount of dividends paid on ~~such the~~ class or classes if the conditions applicable

1 to ~~such~~the class or classes differ substantially from the condition applicable to the kind
2 of insurance as a whole. Every such company shall have an equal rate of dividend for
3 the same term on all policies insuring risks in the same classification. The payment of
4 dividends to policyholders shall not be contingent upon the maintenance or renewal of
5 the policy. All dividends shall be paid to the policyholder unless a written assignment
6 ~~thereof be of those dividends is~~ executed. Neither the payment of dividends nor the rate
7 ~~thereof of the dividends~~ may be guaranteed by any company, or its agent, ~~prior to before~~
8 the declaration of the dividend by the board of directors of ~~such~~the company. The
9 holders of policies of insurance issued by a company in compliance with the orders of
10 any public official, bureau or committee, in conformity with any statutory requirement
11 or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable
12 to the company, may be established as a separate class of risks.

13 (b) Any participating or dividend-paying company, stock or mutual or foreign or
14 domestic, that writes workers' compensation insurance and employers' liability
15 insurance in connection therewith may declare and pay a dividend to policyholders from
16 its ~~surplus, unassigned surplus, as reflected in the company's most recent statement filed~~
17 with the Commissioner under G.S. 58-2-165, which shall include only its surplus in
18 excess of any required minimum surplus. No such dividend shall be paid unless it is fair
19 and equitable and for the best interest of the company and its policyholders. In declaring
20 any dividend to its policyholders, any such company may make reasonable
21 classifications of policies expiring during a fixed period. The payment of dividends to
22 policyholders shall not be contingent upon the maintenance or renewal of the policy. All
23 dividends shall be paid to the policyholder unless a written assignment ~~thereof be of~~
24 those dividends is executed. Neither the payment of dividends nor the rate ~~thereof of the~~
25 dividends may be guaranteed by any company, or its agent, ~~prior to before~~ the
26 declaration of the dividend by the board of directors of ~~such~~the company. The holders
27 of policies of insurance issued by a company in compliance with the orders of any
28 public official, bureau, or committee, in conformity with any statutory requirement or
29 voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to
30 the company, may be established as a separate class of risks."

31 **SECTION 9.3.** The title of G.S. 58-10-1 reads as rewritten:

32 "~~§ 58-10-1. Domestic stock life insurance corporations authorized to convert into~~
33 ~~mutual corporations; procedure.~~Stock to mutual insurer conversion."

34 **SECTION 9.4.** The title of Part 1 of Article 10 of Chapter 58 of the General
35 Statutes reads as rewritten:

36 "Article 10.

37 "Miscellaneous Insurer Financial Provisions.

38 "Part 1. Conversion ~~from of~~ Stock ~~to and~~ Mutual ~~Corporation.~~Insurers."

39 **SECTION 9.5.** The title of G.S. 58-10-10 reads as rewritten:

40 "~~§ 58-10-10. Mutual conversion to stock insurer.~~insurer conversion."

41 **SECTION 9.6.** Part 1 of Article 10 of Chapter 58 of the General Statutes is
42 amended by adding a new section to read:

43 "§ 58-10-12. Conversion plan requirements.

44 (a) As used in this section:

- 1 (1) 'Closed block' means an allocation of assets for a defined group of in-
2 force policies which, together with the premiums of those policies and
3 related investment earnings, are expected to be sufficient to maintain
4 the payments of guaranteed benefits, certain expenses, and
5 continuation of the current dividend scale on the closed block, if
6 experience does not change.
- 7 (2) 'Converting mutual' means a domestic mutual insurance company that
8 has adopted a plan of conversion and an amendment to its articles of
9 incorporation under this section that will, upon consummation, result
10 in the domestic mutual insurance company converting into a domestic
11 stock insurance company.
- 12 (3) 'Eligible member' means a person who:
- 13 a. Is a member of the converting mutual on the date the converting
14 mutual's board of directors adopts a resolution proposing a plan
15 of conversion and an amendment to the articles of
16 incorporation; and
- 17 b. Continues to be a member of the converting mutual on the
18 effective date of the conversion.
- 19 (4) 'Former mutual' means the domestic stock insurance company
20 resulting from the conversion of a converting mutual to a stock
21 insurance company under a plan of conversion and an amendment to
22 its articles of incorporation under this section.
- 23 (5) 'Member' means a person that, according to the records, articles of
24 incorporation, and bylaws of a converting mutual, is a member of the
25 converting mutual.
- 26 (6) 'Membership interests' means:
- 27 a. The voting rights of members of a domestic mutual insurance
28 company as provided by law and by the company's articles of
29 incorporation and bylaws; and
- 30 b. The rights of members of a domestic mutual insurance company
31 to receive cash, stock, or other consideration in the event of a
32 conversion to a stock insurance company under this section or a
33 dissolution as provided by the company's articles of
34 incorporation and bylaws.
- 35 (7) 'Parent company' means a corporation that, upon the effective date of
36 a conversion, owns all of the stock of the former mutual.
- 37 (8) 'Plan of conversion' means the plan of conversion described in
38 subsection (b) of this section.
- 39 (b) The plan of conversion under G.S. 58-10-10 shall:
- 40 (1) Describe the manner in which the proposed conversion will occur and
41 the insurance and any other companies that will result from or be
42 directly affected by the conversion, including the former mutual and
43 any parent company.

- 1 (2) Provide that the membership interests in the converting mutual will be
2 extinguished as of the effective date of the conversion.
- 3 (3) Require the distribution to the eligible members, upon the
4 extinguishing of their membership interests, of aggregate consideration
5 equal to the fair value of the converting mutual.
- 6 (4) Describe the manner in which the fair value of the converting mutual
7 has been or will be determined.
- 8 (5) Describe the form or forms and amount, if known, of consideration to
9 be distributed to the eligible members.
- 10 (6) Specify relevant classes, categories, or groups of eligible members,
11 and describe and explain any differences in the form or forms and
12 amount of consideration to be distributed to or among the eligible
13 members.
- 14 (7) Require and describe the method or formula for the fair and equitable
15 allocation of the consideration among the eligible members.
- 16 (8) Provide for the determination and preservation of the reasonable
17 dividend expectations of eligible members and other policyholders
18 with policies that provide for the distribution of policy dividends,
19 through establishment of a closed block or other method acceptable to
20 the Commissioner.
- 21 (9) Provide that each member and other policyholder of the converting
22 mutual will receive notification of the address and telephone number
23 of the converting mutual and the former mutual, if different, along
24 with the notice of hearing as approved by the Commissioner.
- 25 (10) Include other provisions as the converting mutual determines to be
26 necessary.
- 27 (c) After the adoption by the board of directors of the resolution proposing the
28 plan of conversion under G.S. 58-10-10 and the amendment to its articles of
29 incorporation, the converting mutual shall file with the Commissioner an application for
30 approval of the plan and amendment. The application must contain the following
31 information, together with any additional information as the Commissioner may require:
 - 32 (1) The plan of conversion and a certificate of the secretary of the
33 converting mutual certifying the adoption of the plan by the board of
34 directors.
 - 35 (2) A statement of the reasons for the proposed conversion and why the
36 conversion is in the best interests of the converting mutual, the eligible
37 members, and the other policyholders. The statement must include an
38 analysis of the risks and benefits to the converting mutual and its
39 members of the proposed conversion and a comparison of the risks and
40 benefits of the conversion with the risks and benefits of reasonable
41 alternatives to a conversion.
 - 42 (3) A five-year business plan and at least two years of financial forecasts
43 of the former mutual and any parent company.
 - 44 (4) Any plans that the former mutual or any parent company may have to:

- 1 a. Raise additional capital through the issuance of stock or
2 otherwise;
- 3 b. Sell or issue stock to any person, including any compensation or
4 benefit plan for directors, officers, or employees under which
5 stock may be issued;
- 6 c. Liquidate or dissolve any company or sell any material assets;
- 7 d. Merge or consolidate or pursue any other form of
8 reorganization with any person; or
- 9 e. Make any other material change in investment policy, business,
10 corporate structure, or management.
- 11 (5) Any plans for a delayed distribution of consideration to eligible
12 members or restrictions on sale or transfer of stock or other securities.
- 13 (6) A copy of the form of trust agreement, if a distribution of
14 consideration is to be delayed by more than six months after the
15 effective date of the conversion.
- 16 (7) A plan of operation for a closed block, if a closed block is used for the
17 preservation of the reasonable dividend expectations of eligible
18 members and other policyholders with policies that provide for the
19 distribution of policy dividends.
- 20 (8) Copies of the amendment to the articles of incorporation proposed by
21 the board of directors and proposed bylaws of the former mutual and
22 copies of the existing and any proposed articles of incorporation and
23 bylaws of any parent company.
- 24 (9) A list of all individuals who are or have been selected to become
25 directors or officers of the former mutual and any parent company, or
26 the individuals who perform or will perform duties customarily
27 performed by a director or officer, and the following information
28 concerning each individual on the list unless the information is
29 already on file with the Commissioner:
- 30 a. The individual's principal occupation.
- 31 b. All offices and positions the individual has held in the
32 preceding five years.
- 33 c. Any crime of which the individual has been convicted (other
34 than traffic violations) in the preceding 10 years.
- 35 d. Information concerning any personal bankruptcy of the
36 individual or the individual's spouse during the previous seven
37 years.
- 38 e. Information concerning the bankruptcy of any corporation or
39 other entity of which the individual was an officer or director
40 during the previous seven years.
- 41 f. Information concerning allegations of state or federal securities
42 law violations made against the individual that within the
43 previous 10 years resulted in (i) a determination that the

- 1 individual violated state or federal securities laws; (ii) a plea of
2 nolo contendere; or (iii) a consent decree.
- 3 g. Information concerning the suspension, revocation, or other
4 disciplinary action during the previous 10 years of any state or
5 federal license issued to the individual.
- 6 h. Information as to whether the individual was refused a bond
7 during the previous 10 years.
- 8 (10) A fairness opinion addressed to the board of directors of the converting
9 mutual from a qualified, independent financial adviser, asserting:
- 10 a. That the provision of stock, cash, policy benefits, or other forms
11 of consideration upon the extinguishing of the converting
12 mutual's membership interests under the plan of conversion
13 and the amendment to the articles of incorporation is fair to the
14 eligible members, as a group, from a financial point of view;
15 and
- 16 b. Whether the total consideration under sub-subdivision a. of this
17 subdivision is equal to or greater than the surplus of the
18 converting mutual.
- 19 The Commissioner may waive the fairness opinion in situations
20 involving a straightforward issuance of stock to members of the former
21 mutual.
- 22 (11) An actuarial opinion as to the following:
- 23 a. The reasonableness and appropriateness of the methodology or
24 formulas used to allocate consideration among eligible
25 members, consistent with this Article.
- 26 b. The reasonableness of the plan of operation and sufficiency of
27 the assets allocated to the closed block, if a closed block is used
28 for the preservation of the reasonable dividend expectations of
29 eligible members and other policyholders with policies that
30 provide for the distribution of policy dividends.
- 31 (12) If any of the consideration to be distributed to eligible members
32 consists of stock or other securities, subject to the limitations of G.S.
33 58-10-10(b)(6), a description of the plans made by the former mutual
34 or its parent company to assure that an active public trading market for
35 the stock or other securities will develop within a reasonable amount
36 of time after the effective date of the plan of conversion and that
37 eligible members who receive stock or other securities will be able to
38 sell their stock or other securities, subject to any delayed distribution
39 or transfer restrictions, at reasonable cost and effort.
- 40 (13) Any additional information, documents, or materials that the
41 converting mutual determines to be necessary.
- 42 (d) Distribution of all or part of the consideration to some or all of the eligible
43 members may be delayed, or restrictions on sale or transfer of any stock or other
44 securities to be distributed to eligible members may be required, for a reasonable period

1 of time following the effective date of the conversion. However, the period of time shall
2 not exceed six months unless otherwise approved by the Commissioner.

3 (e) Except as specifically provided in a plan of conversion, for five years
4 following the effective date of the conversion, no person or persons acting in concert
5 (other than the former mutual, any parent company, or any employee benefit plans or
6 trusts sponsored by the former mutual or a parent company) shall directly or indirectly
7 acquire, or agree or offer to acquire, in any manner the beneficial ownership of five
8 percent (5%) or more of the outstanding shares of any class of a voting security of the
9 former mutual or any parent company without the prior approval of the Commissioner
10 of a statement filed by that person with the Commissioner. The statement shall contain
11 the information required by G.S. 58-19-15(b) and any other information required by the
12 Commissioner. The Commissioner shall not approve an acquisition under this
13 subsection unless the Commissioner finds that:

14 (1) The requirements of G.S. 58-19-15(e) will be satisfied.

15 (2) The acquisition will not frustrate the plan of conversion or the
16 amendment to the articles of incorporation as approved by the
17 members and the Commissioner.

18 (3) The boards of directors of the former mutual and any parent company
19 have approved the acquisition.

20 (4) The acquisition would be in the best interest of the present and future
21 policyholders of the former mutual without regard to any interest of
22 policyholders as shareholders of the former mutual or any parent
23 company."

24

25 **PART X. REINSURANCE INTERMEDIARIES.**

26 **SECTION 10.1.** G.S. 58-9-6(a) reads as rewritten:

27 "(a) The Commissioner shall issue an intermediary license or an exemption from
28 the license, subject to G.S. 58-9-2(b)(2) or G.S. 58-9-2(c)(3), to any person who has
29 complied with the requirements of this Article. A license issued to a noncorporate entity
30 authorizes all of the members of the entity and any designated employees to act as
31 intermediaries under the license, and those persons shall be named in the application
32 and any supplements. A license issued to a corporation authorizes all of the officers and
33 any designated employees and directors of the corporation to act as intermediaries on
34 behalf of the corporation, and those persons shall be named in the application and any
35 supplements."

36 **SECTION 10.2.** G.S. 58-9-11(b) reads as rewritten:

37 "(b) An insurer shall not engage the services of any person to act as a broker on its
38 behalf unless the person is licensed under ~~G.S. 58-9-6~~, G.S. 58-9-6 or exempted under
39 this Article. An insurer shall not employ an individual who is employed by a broker
40 with which it transacts business, unless the broker is under common control with the
41 insurer under Article 19 of this Chapter."

42 **SECTION 10.3.** G.S. 58-9-21(a) reads as rewritten:

"(a) A reinsurer shall not engage the services of any person to act as a manager on its behalf unless the person is licensed under ~~G.S. 58-9-6~~, G.S. 58-9-6 or exempted under this Article."

PART XI. MORTGAGE GUARANTY INSURANCE.

SECTION 11. Article 10 of Chapter 58 of the General Statutes is amended by adding the following new Part to read:

"Part 5. Mortgage Guaranty Insurance.

"§ 58-10-120. Definitions.

As used in this Part:

- (1) "Mortgage guaranty insurers report of policyholders position" means the annual supplementary report required by the Commissioner.
- (2) "Policyholders position" means the contingency reserve established under G.S. 58-10-135 and policyholders' surplus. "Minimum policyholders position" is calculated as described in G.S. 58-10-125.
- (3) "Policyholders' surplus" means an insurer's net worth; the difference between its assets and liabilities, as reported in its annual statement.

"§ 58-10-125. Minimum policyholders position.

(a) For the purpose of complying with G.S. 58-7-75, a mortgage guaranty insurer shall maintain at all times a minimum policyholders position in the amount required by this section. The policyholders position shall be net of reinsurance ceded but shall include reinsurance assumed.

(b) If a mortgage guaranty insurer does not have the minimum amount of policyholders position required by this section it shall cease transacting new business until the time that its policyholders position is in compliance with this section.

(c) If a policy of mortgage guaranty insurance insures individual loans with a percentage claim settlement option on those loans, a mortgage guaranty insurer shall maintain a policyholders position based on each one hundred dollars (\$100.00) of the face amount of the mortgage, the percentage coverage, and the loan-to-value category. The minimum amount of policyholders position shall be calculated in the following manner:

- (1) If the loan-to-value is greater than seventy-five percent (75%), the minimum policyholders position per one hundred dollars (\$100.00) of the face amount of the mortgage for the specific percent coverage shall be as shown in the schedule below:

<u>Percent Coverage</u>	<u>Policyholders Position Per \$100 of the Face Amount of the Mortgage</u>	<u>Percent Coverage</u>	<u>Policyholders Position Per \$100 of the Face Amount of the Mortgage</u>
<u>5</u>	<u>\$0.20</u>	<u>55</u>	<u>\$1.50</u>
<u>10</u>	<u>0.40</u>	<u>60</u>	<u>1.55</u>
<u>15</u>	<u>0.60</u>	<u>65</u>	<u>1.60</u>
<u>20</u>	<u>0.80</u>	<u>70</u>	<u>1.65</u>

1	<u>25</u>	<u>1.00</u>	<u>75</u>	<u>1.75</u>
2	<u>30</u>	<u>1.10</u>	<u>80</u>	<u>1.80</u>
3	<u>35</u>	<u>1.20</u>	<u>85</u>	<u>1.85</u>
4	<u>40</u>	<u>1.30</u>	<u>90</u>	<u>1.90</u>
5	<u>45</u>	<u>1.35</u>	<u>95</u>	<u>1.95</u>
6	<u>50</u>	<u>1.40</u>	<u>100</u>	<u>2.00</u>

7
8 (2) If the loan-to-value is at least fifty percent (50%) and not more than
9 seventy-five percent (75%), the minimum amount of the policyholders
10 position shall be fifty percent (50%) of the minimum of the amount
11 calculated under subdivision (c)(1) of this section.

12 (3) If the loan-to-value is less than fifty percent (50%), the minimum
13 amount of policyholders position shall be twenty-five percent (25%) of
14 the amount calculated under subdivision (c)(1) of this section.

15 (d) If a policy of mortgage guaranty insurance provides coverage on a group of
16 loans subject to an aggregate loss limit, the policyholders position shall be:

17 (1) If the equity is not more than fifty percent (50%) and is at least twenty
18 percent (20%), or equity plus prior insurance or a deductible is at least
19 twenty-five percent (25%) and not more than fifty-five percent (55%),
20 the minimum amount of policyholders position shall be calculated as
21 follows:

<u>Percent</u>	<u>Policyholders Position Per</u>	<u>Percent</u>	<u>Policyholders Position Per</u>
<u>Coverage</u>	<u>\$100 of the Face Amount</u>	<u>Coverage</u>	<u>\$100 of the Face Amount</u>
	<u>of the Mortgage</u>		<u>of the Mortgage</u>
25 <u>1</u>	<u>\$0.30</u>	25 <u>50</u>	<u>\$0.825</u>
26 <u>5</u>	<u>0.50</u>	26 <u>60</u>	<u>0.85</u>
27 <u>10</u>	<u>0.60</u>	27 <u>70</u>	<u>0.875</u>
28 <u>15</u>	<u>0.65</u>	28 <u>75</u>	<u>0.90</u>
29 <u>20</u>	<u>0.70</u>	29 <u>80</u>	<u>0.925</u>
30 <u>25</u>	<u>0.75</u>	30 <u>90</u>	<u>0.95</u>
31 <u>30</u>	<u>0.775</u>	31 <u>100</u>	<u>1.00</u>
32 <u>40</u>	<u>0.80</u>		

33
34 (2) If the equity is less than twenty percent (20%), or the equity plus prior
35 insurance or a deductible is less than twenty-five percent (25%), the
36 minimum amount of policyholders position shall be two hundred
37 percent (200%) of the amount required by subdivision (d)(1) of this
38 section.

39 (3) If the equity is more than fifty percent (50%), or the equity plus prior
40 insurance or a deductible is more than fifty-five percent (55%), the
41 minimum amount of policyholders position shall be fifty percent
42 (50%) of the amount required by subdivision (d)(1) of this section.

43 (e) If a policy of mortgage guaranty insurance provides for layers of coverage,
44 deductibles, or excess reinsurance, the minimum amount of policyholders position shall

1 be computed by subtraction of the minimum position for the lower percentage coverage
2 limit from the minimum position for the upper or greater coverage limit.

3 (f) If a policy of mortgage guaranty insurance provides for coverage on loans
4 secured by junior liens, the policyholders position shall be:

5 (1) If the policy provides coverage on individual loans, the minimum
6 amount of policyholders position shall be calculated as in subsection
7 (c) of this section as follows:

8 a. The loan-to-value percent is the entire loan indebtedness on the
9 property divided by the value of the property;

10 b. The percent coverage is the insured portion of the junior loan
11 divided by the entire loan indebtedness on the collateral
12 property; and

13 c. The face amount of the insured mortgage is the entire loan
14 indebtedness on the property.

15 (2) If the policy provides coverage on a group of loans subject to an
16 aggregate loss limit, the policyholders position shall be calculated
17 according to subsection (d) of this section as follows:

18 a. The equity is the complement of the loan-to-value percent
19 calculated as in subdivision (d)(1) of this section;

20 b. The percent coverage is calculated as in subdivision (d)(1) of
21 this section; and

22 c. The face amount of the insured mortgage is the entire loan
23 indebtedness on the property.

24 (g) If a policy of mortgage guaranty insurance provides for coverage on leases,
25 the policyholders position shall be four dollars (\$4.00) for each one hundred dollars
26 (\$100.00) of the insured amount of the lease.

27 (h) If a policy of mortgage guaranty insurance insures loans with a percentage
28 loss settlement option coverage between any of the entries in the schedules in this
29 section, then the factor for policyholders position per one hundred dollars (\$100.00) of
30 the face amount of the mortgage shall be prorated between the factors for the nearest
31 percent coverage listed.

32 **"§ 58-10-130. Unearned premium reserve.**

33 (a) The unearned premium reserve shall be computed as follows:

34 (1) The unearned premium reserve for premiums paid in advance annually
35 shall be calculated on the monthly pro rata fractional basis.

36 (2) Premiums paid in advance for 10-year coverage shall be placed in the
37 unearned premium reserve and shall be released from this reserve as
38 follows:

39 a. 1st month - 1/132;

40 b. 2nd through 12th month - 2/132 each month;

41 c. 13th month - 3/264;

42 d. 14th through 120th month - 1/132 per month;

43 e. 121st month - 1/264.

1 (3) Premiums paid in advance for periods in excess of 10 years. During
2 the first 10 years of coverage the unearned portion of the premium
3 shall be the premium collected minus an amount equal to the premium
4 that would have been earned had the applicable premium for 10 years
5 of coverage been received. The premium remaining after 10 years shall
6 be released from the unearned premium reserve monthly pro rata over
7 the remaining term of coverage.

8 (b) Fifty percent (50%) of the premium remaining after establishment of the
9 premium reserve specified in subsection (a) of this section shall be maintained as a
10 special contingency reservation of premium and reported in the financial statement as a
11 liability.

12 (c) The case basis method shall be used to determine the loss reserve which shall
13 include a reserve for claims reported and unpaid and a reserve for claims incurred but
14 not reported.

15 **"§ 58-10-135. Contingency reserve.**

16 (a) Subject to G.S. 58-7-21, a mortgage guaranty insurer shall make an annual
17 contribution to the contingency reserve which in the aggregate shall be the greater of:

18 (1) Fifty percent (50%) of the net earned premium reported in the annual
19 statement; or

20 (2) The sum of:

21 a. The policyholders position established under G.S. 58-10-125 on
22 residential buildings designed for occupancy by not more than
23 four families divided by seven;

24 b. The policyholders position established under G.S. 58-10-125 on
25 residential buildings designed for occupancy by five or more
26 families divided by five;

27 c. The policyholders position established under G.S. 58-10-125 on
28 buildings occupied for industrial or commercial purposes
29 divided by three; and

30 d. The policyholders position established under G.S. 58-10-125
31 for leases divided by 10.

32 (b) If the mortgage guaranty coverage is not expressly provided for in this
33 section, the Commissioner may establish a rate formula factor that will produce a
34 contingency reserve adequate for the risk assumed.

35 (c) The contingency reserve established by this section shall be maintained for
36 120 months. That portion of the contingency reserve established and maintained for
37 more than 120 months shall be released and shall no longer constitute part of the
38 contingency reserve.

39 (d) With the approval of the Commissioner, withdrawals may be made from the
40 contingency reserve when incurred losses and incurred loss expenses exceed the greater
41 of either thirty-five percent (35%) of the net earned premium or seventy percent (70%)
42 of the amount which subsection (a) of this section requires to be contributed to the
43 contingency reserve in such year. On a quarterly basis, provisional withdrawals may be

1 made from the contingency reserve in an amount not to exceed seventy-five percent
2 (75%) of the withdrawal calculated in accordance with subsection (d)(1) of this section.

3 (e) With the approval of the Commissioner, a mortgage guaranty insurer may
4 withdraw from the contingency reserve any amounts which are in excess of the
5 minimum policyholders position as filed with the most recently filed annual statement.
6 In reviewing a request for withdrawal pursuant to this subsection, the Commissioner
7 may consider loss development and trends. If any portion of the contingency reserve for
8 which withdrawal is requested pursuant to this subsection is maintained by a reinsurer,
9 the Commissioner may also consider the financial condition of the reinsurer. If any
10 portion of the contingency reserve for which withdrawal is requested pursuant to this
11 subsection is maintained in a segregated account or segregated trust and such
12 withdrawal would result in funds being removed from the segregated account or
13 segregated trust, the Commissioner may also consider the financial condition of the
14 reinsurer.

15 (f) Releases and withdrawals from the contingency reserve shall be accounted
16 for on a first-in-first-out basis as prescribed by the Commissioner.

17 (g) The calculations to develop the contingency reserve shall be made in the
18 following sequence:

19 (1) The additions required by subsections (a) and (b) of this section;

20 (2) The releases permitted by subsection (c) of this section;

21 (3) The withdrawals permitted by subsection (d) of this section; and

22 (4) The withdrawals permitted by subsection (e) of this section.

23 (h) Whenever the laws or regulations of another jurisdiction in which a mortgage
24 guaranty insurer, subject to the requirements of this Part is licensed, require a larger
25 unearned premium reserve or a larger contingency reserve in the aggregate than that set
26 forth in this Part, the establishment and maintenance of the larger unearned premium
27 reserve or contingency reserve shall be deemed to be in compliance with this Part."

29 **PART XII. RISK-BASED CAPITAL REQUIREMENTS.**

30 **SECTION 12.1.** G.S. 58-12-2(3) reads as rewritten:

31 "(3) Domestic insurer. – Any insurance company or health organization
32 organized in this State under Article ~~77~~ 7, 15, 65, or 67 of this
33 Chapter."

34 **SECTION 12.2.** G.S. 58-12-2(4) reads as rewritten:

35 "(4) Foreign insurer. – Any insurance company or health organization that
36 is admitted to do business in this State under Article 16 or 67 of this
37 Chapter but is not domiciled in this State."

38 **SECTION 12.3.** G.S. 58-12-2 is amended by adding the following new
39 subsection to read:

40 "(4b) Health organization. -- Any health maintenance organization, limited
41 health service organization, dental or vision plan, hospital, medical, or
42 dental indemnity or service corporation, or other organization licensed
43 under Article 65 or 67 of this Chapter. 'Health organization' does not
44 include an insurer that is licensed as either a life or health insurer or a

1 property or casualty insurer under this Chapter and that is otherwise
2 subject to either the life or property and casualty risk-based capital
3 requirements."

4 **SECTION 12.4.** G.S. 58-12-6(d) reads as rewritten:

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

- 9 (1) Asset risk;
- 10 (2) Credit risk;
- 11 (3) Underwriting risk; and
- 12 (4) All business and other relevant risks set forth in the risk-based capital
13 instructions, determined in each case by applying the factors in the
14 manner set forth in the risk-based capital instructions."

15 **SECTION 12.5.** G.S. 58-12-11(a)(1)a. reads as rewritten:

16 "a. The insurer's total adjusted capital is greater than or equal to its
17 regulatory action level risk-based capital but less than its
18 company action level risk-based ~~capital; capital, if the insurer is~~
19 a property or casualty insurer or a health organization; or".

20 **SECTION 12.6.** G.S. 58-12-11(b)(3) reads as rewritten:

21 "(3) Provides forecasts of the insurer's financial results in the current year
22 and at least the four succeeding years, both in the absence of proposed
23 corrective actions and giving effect to the proposed corrective actions,
24 including forecasts of statutory operating income, net income, capital,
25 or surplus (the forecasts for both new and renewal business should
26 include separate forecasts for each major line of business and
27 separately identify each significant income, expense, and benefit
28 component). For a health organization, the forecasted financial results
29 shall be for the current year and at least two succeeding years and shall
30 include statutory balance sheets, operating income, net income, capital
31 and surplus, and risk-based capital levels."

32 **SECTION 12.7.** G.S. 58-12-25(b) reads as rewritten:

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

1 reasonable expectation that the mandatory control level event may be eliminated within
2 the 90-day period."

3 **SECTION 12.8.** G.S. 58-12-25 is amended by adding the following new
4 subsection to read:

5 "(c) In the event of a mandatory control level event with respect to a property and
6 casualty insurer, the Commissioner shall take actions as are necessary to cause the
7 insurer to be placed under regulatory control under Article 30 of this Chapter, or, in the
8 case of an insurer which is writing no business and which is running off its existing
9 business, may allow the insurer to continue its runoff under the supervision of the
10 Commissioner. In either event, the mandatory control level event is sufficient grounds
11 for the Commissioner to take action under Article 30 of this Chapter, and the
12 Commissioner shall have the rights, powers, and duties with respect to the insurer as are
13 set forth in Article 30 of this Chapter. If the Commissioner takes actions under an
14 adjusted risk-based capital report, the insurer shall be entitled to such protections as are
15 afforded to insurers under the provisions of Article 30 of this Chapter pertaining to
16 summary proceedings. Notwithstanding any of the foregoing, the Commissioner may
17 forego action for up to 90 days after the mandatory control level event if the
18 Commissioner finds there is a reasonable expectation that the mandatory control level
19 event may be eliminated within the 90-day period."

20 **SECTION 12.9.** Article 12 of Chapter 58 of the General Statutes is amended
21 by adding the following new section to read:

22 "**§ 58-12-65. Health organization phase-in provision.**

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

- 26 (1) In the event of a company action level event with respect to a domestic
27 insurer, the Commissioner shall take no regulatory action under this
28 Article.
- 29 (2) In the event of a regulatory action level event under G.S. 58-12-
30 16(a)(1), (2), or (3), the Commissioner shall take the actions required
31 under G.S. 58-12-11.
- 32 (3) In the event of a regulatory action level event under G.S. 58-12-
33 16(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event,
34 the Commissioner shall take the actions required under G.S. 58-12-16
35 with respect to the insurer.
- 36 (4) In the event of a mandatory control level event with respect to an
37 insurer, the Commissioner shall take the actions required under G.S.
38 58-12-21 with respect to the insurer."

39 **SECTION 12.10.** Article 12 of Chapter 58 of the General Statutes is
40 amended by adding a new section to read:

41 "**§ 58-12-70. HMO net worth requirements.**

42 The Commissioner may require an HMO to have and maintain a larger amount of
43 net worth than prescribed in G.S. 58-67-110, based upon the principles of risk-based
44 capital as determined by the NAIC or the Commissioner."

PART XIII. INSURANCE COMPANY ASSET PROTECTION.

SECTION 13.1. G.S. 58-13-10 reads as rewritten:

"§ 58-13-10. Scope.

This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under ~~Articles 1 through 68 of this Chapter~~. Foreign insurers shall comply in substance with the requirements and limitations of this Article. ~~This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business in such jurisdictions.~~ This Article does not apply to the following:

- (1) Variable contracts or guaranteed investment contracts for which separate accounts are required to be maintained.
- (2) Statutory deposits that are required by insurance regulatory agencies to be maintained as a requirement for doing business in such jurisdictions.
- (3) Real estate, authorized under G.S. 58-7-187, encumbered by a mortgage loan with a first lien."

SECTION 13.2. G.S. 58-13-15(3) reads as rewritten:

- "(3) "Reserve assets" means those assets of an insurer that are authorized investments for policy reserves in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95~~ this Chapter."

SECTION 13.3. G.S. 58-13-15(4) reads as rewritten:

- "(4) "Policyholder-related liabilities" means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95~~ this Chapter."

SECTION 13.4. G.S. 58-13-20(b) reads as rewritten:

"(b) The Commissioner has the right to examine any of such assets, reinsurance agreements, or deposit arrangements at any time in accordance with his authority to make examinations of insurers as conferred by other provisions of ~~Articles 1 through 64 of this Chapter.~~"

PART XIV. FOREIGN INSURANCE COMPANIES.

SECTION 14.1. G.S. 58-16-5 reads as rewritten:

"§ 58-16-5. Conditions of admission.licensure.

A foreign or alien insurance company may be ~~admitted and authorized~~ licensed to do business when it:

- (1) Deposits with the Commissioner a certified copy of its charter or certificate of organization and a statement of its financial condition and business, in ~~such the~~ the form and detail as ~~he~~ that the Commissioner requires, signed and sworn to by its president and secretary or other proper officer, and pays for the filing of this statement the sum required by law.

- 1 (2) Satisfies the Commissioner that it is fully and legally organized under
2 the laws of its state or government to do the business it proposes to
3 ~~transact,~~ transact as direct insurance or assumed reinsurance, and that
4 it has been successful in the conduct of ~~such the~~ the business; that it has, if
5 a stock company, a free surplus and a fully paid-up and unimpaired
6 capital, exclusive of stockholders' obligations of any description of an
7 amount not less than that required for the organization of a domestic
8 company writing the same kinds of business; and if a mutual company
9 that its free surplus is not less than that required for the organization of
10 a domestic company writing the same kind of business, and that ~~such~~ the
11 capital, surplus, and other funds are invested in ~~substantial~~
12 substantially in accordance with the requirements of ~~Articles 1 through~~
13 ~~64~~ of this Chapter.
- 14 (3) Repealed by Session Laws 1995, c. 517, s. 6.
- 15 (4) Repealed by Session Laws 1987, c. 629, s. 20.
- 16 (5) Files with the Commissioner a certificate that it has complied with the
17 laws of the state or government under which it was organized and is
18 authorized to make contracts of insurance.
- 19 (6) Satisfies the Commissioner that it is in substantial compliance with ~~the~~
20 ~~provisions of~~ G.S. 58-7-21, 58-7-26, 58-7-30, and 58-7-31 and Article
21 13 of this Chapter.
- 22 (7) Satisfies the Commissioner that it is in compliance with the company
23 name requirements of G.S. 58-7-35.
- 24 (8) Satisfies the Commissioner that the operation of the company in this
25 State would not be hazardous to prospective policyholders, creditors,
26 or the general public.
- 27 (9) Satisfies the Commissioner that it is in substantial compliance with the
28 requirements of G.S. 58-7-37 pertaining to the background of its
29 officers and directors.
- 30 (10) Files with the Commissioner an instrument appointing the
31 Commissioner as the company's agent on whom any legal process
32 under G.S. 58-16-30 may be served. This appointment is irrevocable as
33 long as any liability of the company remains outstanding in this State.
34 A copy of this instrument, certified by the Commissioner, is sufficient
35 evidence of this appointment; and service upon the Commissioner is
36 sufficient service upon the company."

37 **SECTION 14.2.** G.S. 58-16-6 reads as rewritten:

38 "**§ 58-16-6. Conditions of continued licensure.**

39 In order for a foreign insurance company to continue to be licensed, it shall report
40 any changes in the documents filed under G.S. 58-16-5(1) or G.S. 58-16-5(5), maintain
41 the amounts of capital and surplus specified in G.S. 58-16-5(2), and remain in
42 substantial compliance with the statutes listed in ~~G.S. 58-16-5(6) and G.S. 58-16-5(7).~~
43 G.S. 58-16-5(6), (7), and (8)."
44

PART XV. PROMOTING AND HOLDING COMPANIES.

SECTION 15. Article 18 of Chapter 58 of the General Statutes, comprising G.S. 58-18-1 through G.S. 58-18-25 is repealed.

PART XVI. INSURANCE HOLDING COMPANY SYSTEMS.

SECTION 16.1. G.S. 58-19-5(5) reads as rewritten:

"(5) "Person" means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert."

SECTION 16.2. The introductory paragraph of G.S. 58-19-10(b) reads as rewritten:

"(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under ~~all other sections of Articles 1 through 64~~ of this Chapter, a domestic insurer may also:"

SECTION 16.3. G.S. 58-19-10(b)(1) reads as rewritten:

"(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser of ten percent (10%) of ~~such the~~ insurer's admitted assets or fifty percent (50%) of ~~such the~~ insurer's ~~surplus as regards policyholders, policyholders' surplus,~~ policyholders' surplus, provided that after ~~such those~~ investments, the insurer's ~~surplus as regards policyholders~~ policyholders' surplus will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of ~~such the~~ investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included: (i) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of ~~such the~~ subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;"

SECTION 16.4. G.S. 58-19-10(b)(3) reads as rewritten:

"(3) With the approval of the Commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after such investment the insurer's ~~surplus as regards policyholders~~ policyholders' surplus will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs."

SECTION 16.5. G.S. 58-19-15(h) reads as rewritten:

1 "(h) The provisions of this section do not apply to any offer, request, invitation,
2 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not
3 having been made or entered into for the purpose and not having the effect of changing
4 or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended
5 within the purposes of this section. Any acquisition of stock of a former domestic
6 mutual insurer by a parent company that occurs in connection with the conversion of a
7 mutual insurer to a stock insurer under G.S. 58-10-10 is not subject to this section,
8 provided that no person acquires control of the parent company."

9 **SECTION 16.6.** G.S. 58-19-25(a) reads as rewritten:

10 "(a) Every insurer that is licensed to do business in this State and that is a member
11 of an insurance holding company system shall register with the Commissioner, except a
12 foreign insurer subject to the registration requirements and standards adopted by statute
13 or regulation in the jurisdiction of its domicile that are substantially similar to those
14 contained ~~in this section and G.S. 58-19-30 or a provision such as the following:~~ Each
15 ~~registered insurer shall keep current the information required to be disclosed in its~~
16 ~~registration statement by reporting all material changes or additions within 15 days after~~
17 ~~the end of the month in which it learns of each change or addition. The insurer shall also~~
18 ~~file a copy of its registration statement and any amendments to the statement in each~~
19 ~~state in which that insurer is authorized to do business if requested by the insurance~~
20 ~~regulator of that state. in:~~

21 (1) This section.

22 (2) G.S. 58-19-30(a), G.S. 58-19-30(c), and G.S. 58-19-30(d).

23 (3) G.S. 58-19-30(b) or a statutory or regulatory provision such as the
24 following: Each registered insurer shall keep current the information
25 required to be disclosed in its registration statement by reporting all
26 material changes or additions within 15 days after the end of the month
27 in which it learns of each change or addition. The insurer shall also file
28 a copy of its registration statement and any amendments to the
29 statement in each state in which that insurer is authorized to do
30 business, if requested by the insurance regulator of that state.

31 Any insurer that is subject to registration under this section shall register within 30 days
32 after it becomes subject to registration, and an amendment to the registration statement
33 shall be filed by March 1 of each year for the previous calendar year; unless the
34 Commissioner for good cause shown extends the time for registration or filing, and then
35 within the extended time. All registration statements shall contain a summary, on a form
36 prescribed by the Commissioner, outlining all items in the current registration statement
37 representing changes from the prior registration statement. The Commissioner may
38 require any insurer that is a member of a holding company system that is not subject to
39 registration under this section to furnish a copy of the registration statement or other
40 information filed by the insurance company with the insurance regulator of its
41 domiciliary jurisdiction."

42 **SECTION 16.7.** G.S. 58-19-30(b)(4) reads as rewritten:

43 "(4) All management agreements, service contracts, guarantees, or
44 cost-sharing arrangements."

1
2 **PART XVII. SURPLUS LINES INSURANCE.**

3 **SECTION 17.1.** G.S. 58-21-15(1) reads as rewritten:

4 "(1) Each insurer is an eligible surplus lines ~~insurer;~~insurer and is
5 authorized to write the same kind of insurance in its domiciliary
6 jurisdiction;".

7 **SECTION 17.2.** G.S. 58-21-20(a)(2) reads as rewritten:

8 "(2) Qualifies under one of the following subdivisions:

9 a. Has capital and surplus or its equivalent under the laws of its
10 domiciliary jurisdiction, which equals either:

11 1. This State's minimum capital and surplus requirements
12 under G.S. 58-7-75, or

13 2. Fifteen million dollars (\$15,000,000),

14 whichever is greater, except that nonadmitted insurers already
15 qualified under this Article must have ten million dollars
16 (\$10,000,000) by December 31, 1991, twelve million five
17 hundred thousand dollars (\$12,500,000) by December 31, 1992,
18 and fifteen million dollars (\$15,000,000) by December 31,
19 1993. The requirements of this sub-subdivision may be satisfied
20 by an insurer possessing less than the commitment capital and
21 surplus upon an affirmative finding of acceptability by the
22 Commissioner. The finding shall be based upon such factors as
23 quality of management, capital and surplus of any parent
24 company, company underwriting profit and investment income
25 trends, and the insurer's record and reputation within the
26 industry. In no event shall the Commissioner make an
27 affirmative finding of acceptability when the insurer's capital
28 and surplus is less than four million five hundred thousand
29 dollars (\$4,500,000).

30 In addition, an alien insurer qualifies under this subdivision
31 if it complies with the capital and surplus requirements of this
32 subdivision and maintains in the United States an irrevocable
33 trust fund in either a national bank or a member of the Federal
34 Reserve System, in an amount not less than ~~two million five~~
35 ~~hundred thousand dollars (\$2,500,000)~~ five million four
36 hundred thousand dollars (\$5,400,000) for the protection of all
37 of its policyholders in the United States, and the trust fund
38 consists of cash, securities, letters of credit, or of investment of
39 substantially the same character and quality as those which are
40 eligible investments for the capital and statutory reserves of
41 admitted insurers authorized to write like kinds of insurance in
42 this State. The trust fund, which shall be included in any
43 calculation of capital and surplus or its equivalent, shall have an
44 expiration date which at no time shall be less than five years; or

- 1 b. In the case of any Lloyd's plans or other similar ~~unincorporated~~
2 group of insurers, which ~~includes individual insurers,~~ consists
3 of unincorporated individual insurers, or a combination of both
4 unincorporated and incorporated insurers, maintains a trust fund
5 in an amount of not less than ~~fifty million dollars (\$50,000,000)~~
6 one hundred million dollars (\$100,000,000) as security to the
7 full amount thereof for all policyholders and creditors in the
8 United States of each member of the group, and the trust shall
9 likewise comply with the terms and conditions established in
10 subdivision (2)a. of this section for alien insurers; and
- 11 c. In the case of an "insurance exchange" created by the laws of
12 individual states, maintain capital and surplus, or the substantial
13 equivalent thereof, of not less than ~~fifty million dollars~~
14 ~~(\$50,000,000)~~ seventy-five million dollars (\$75,000,000) in the
15 aggregate. For insurance exchanges which maintain funds in an
16 amount of not less than fifteen million dollars (\$15,000,000) for
17 the protection of all insurance exchange policyholders, each
18 individual syndicate shall maintain minimum capital and
19 surplus, or the substantial equivalent thereof, of not less than
20 ~~three million dollars (\$3,000,000).~~ five million dollars
21 (\$5,000,000). If the insurance exchange does not maintain funds
22 in an amount of not less than fifteen million dollars
23 (\$15,000,000) for the protection of all insurance exchange
24 policyholders, each individual syndicate shall meet the
25 minimum capital and surplus requirements of subdivision (2)a.
26 of this section.
- 27 d. In the case of a group of incorporated insurers under common
28 administration, which has continuously transacted an insurance
29 business outside the United States for at least three years
30 immediately before this time, and which submits to this State's
31 authority to examine its books and records and bears the
32 expense of the examination, and maintains an aggregate
33 policyholders' surplus of not less than ten billion dollars
34 (\$10,000,000,000), and maintains in trust a surplus of not less
35 than one hundred million dollars (\$100,000,000) for the benefit
36 of United States surplus lines policyholders of any member of
37 the group, and each insurer maintains capital and surplus of not
38 less than twenty-five million dollars (\$25,000,000) per
39 company."

40 **SECTION 17.3.** G.S. 58-21-30 reads as rewritten:

41 **"§ 58-21-30. Withdrawal of eligibility from a surplus lines insurer.**

42 If at any time the Commissioner has reason to believe that an eligible surplus lines
43 insurer:

- 1 (1) Is in unsound financial ~~condition,~~condition or has acted in an
2 untrustworthy manner.
3 (2) Is no longer eligible under G.S. 58-21-20,
4 (3) Has willfully violated the laws of this State, or
5 (4) Does not make reasonably prompt payment of just losses and claims in
6 this State or elsewhere, the Commissioner may declare it ineligible.
7 The Commissioner shall promptly mail notice of all such declarations
8 to each surplus lines licensee."
9

10 PART XVIII. RISK RETENTION GROUPS.

11 SECTION 18. G.S. 58-22-10(3) reads as rewritten:

- 12 "(3) "Hazardous financial condition" means that, based on its present or
13 reasonably anticipated financial condition, a risk retention ~~group,~~
14 group is insolvent or, although not yet financially impaired or
15 insolvent, is unlikely to be able:
16 a. To meet obligations to policyholders with respect to known
17 claims and reasonably anticipated claims; or
18 b. To pay other obligations in the normal course of business."
19

20 PART XIX. INSURANCE COMPANY RECEIVERSHIPS.

21 SECTION 19. G.S. 58-30-75(7) reads as rewritten:

- 22 "(7) Without first obtaining the written consent of the ~~Commissioner~~
23 ~~pursuant to G.S. 58-7-150, Commissioner,~~ the insurer has (i)
24 transferred, or attempted to transfer, in a manner contrary to Article 19
25 of this Chapter, substantially its entire property or business, or (ii) has
26 entered into any transaction, the effect of which is to merge,
27 consolidate, or reinsure substantially its entire property or business in
28 or with the property or business of any other person."
29

30 PART XX. MANAGING GENERAL AGENTS.

31 SECTION 20.1. G.S. 58-34-2(a) reads as rewritten:

- 32 "(a) As used in this Article:
33 (1) "Control", including the terms "controlling", "controlled by", and
34 "under common control", means the direct or indirect possession of the
35 power to direct or cause the direction of the management and policies
36 of a person, whether through the ownership of voting securities, by
37 contract other than a commercial contract for goods or
38 nonmanagement services, or otherwise, unless the power is the result
39 of an official position with or corporate office held by the person.
40 (1a) "Custodial agreement" means any agreement or contract under which
41 any person is delegated authority to safekeep assets of the insurer.
42 (2) "Insurer" means a domestic insurer but does not mean a reciprocal
43 regulated under Article 15 of this Chapter.

- 1 (2a) "Management contract" means any agreement or contract under which
2 any person is delegated management duties or control of an insurer or
3 transfers a substantial part of any major function of an insurer, such as
4 adjustment of losses, production of business, investment of assets, or
5 general servicing of the insurer's business.
- 6 (3) "Managing general agent" or "MGA" means any person who manages
7 all or part of the insurance business of an insurer (including the
8 management of a separate division, department, or underwriting
9 office) and acts as an agent for the insurer, whether known as a
10 managing general agent, manager, or other similar term, who, with or
11 without the authority, either separately or together with persons under
12 common control, produces, directly or indirectly, and underwrites an
13 amount of gross direct written premium equal to or more than five
14 percent (5%) of the policyholder surplus as reported in the last annual
15 statement of the insurer in any one quarter or year together with one or
16 more of the following activities related to the business produced: (i)
17 adjusts or pays any claims, or (ii) negotiates reinsurance on behalf of
18 the insurer. "MGA" does not mean an employee of the insurer; an
19 underwriting manager who, pursuant to contract, manages all or part of
20 the insurance operations of the insurer, is under common control with
21 the insurer, is subject to Article 19 of this Chapter, and whose
22 compensation is not based on the volume of premiums written; a
23 person who, under Article 15 of this Chapter, is designated and
24 authorized by subscribers as the attorney-in-fact for a reciprocal
25 having authority to obligate them on reciprocal and other insurance
26 contracts; or a U.S. Manager of the United States branch of an alien
27 insurer.
- 28 (4) "Qualified actuary" means a person who meets the standards of a
29 qualified actuary as specified in the NAIC Annual Statement
30 Instructions, as amended or clarified by rule, order, directive, or
31 bulletin of the Department, for the type of insurer for which the MGA
32 is establishing loss reserves.
- 33 (5) "Underwrite" means the authority to accept or reject risk on behalf of
34 the insurer."

35 **SECTION 20.2.** G.S. 58-34-2(j) reads as rewritten:

- 36 "(j) The Commissioner shall disapprove any such contract that:
- 37 (1) Does not contain the required contract provisions specified in
38 subsection (d) of this section;
- 39 (2) Subjects the insurer to excessive charges for expenses or commission;
- 40 (3) ~~Vests in the MGA any control over the management of the affairs of~~
41 ~~the insurer to the exclusion of the board of directors of the insurer;~~
- 42 (4) Is entered into with any person if the person or its officers and
43 directors are of known bad character or have been affiliated directly or
44 indirectly through ownership, control, management, reinsurance

1 transactions, or other insurance or business relationships with any
2 person known to have been involved in the improper manipulation of
3 assets, accounts, or reinsurance; or

- 4 (5) Is determined by the Commissioner to contain provisions that are not
5 fair and reasonable to the insurer.

6 Failure of the Commissioner to disapprove any such contract within 30 days after the
7 contract has been filed with the Commissioner constitutes the Commissioner's approval
8 of the contract. An insurer may continue to accept business from ~~such~~the person until
9 the Commissioner disapproves the contract. Any disapproval shall be in writing. The
10 Commissioner ~~may, after a hearing held under G.S. 58-2-50, may~~ withdraw approval of
11 any contract the Commissioner has previously approved ~~upon finding if the~~
12 Commissioner determines that the basis of the original approval no longer exists or that
13 the contract has, in actual operation, shown itself to be subject to disapproval on any of
14 the grounds in this subsection. If the Commissioner withdraws approval of a contract,
15 the Commissioner shall give the insurer notice of, and written reasons for, the
16 withdrawal of approval. The Commissioner shall grant any party to the contract a
17 hearing upon request."

18 **SECTION 20.3.** G.S. 58-34-10 reads as rewritten:

19 "**§ 58-34-10. Management contracts.**

20 (a) Subject to G.S. 58-19-30(b)(4), any domestic insurer that enters into a
21 management contract or custodial agreement must file that contract or agreement with
22 the Commissioner on or before its effective date. ~~As used in this section, "management~~
23 ~~contract" means any agreement or contract under which any person is delegated~~
24 ~~management duties or control of an insurer, or transfers a substantial part of any major~~
25 ~~function of an insurer, such as adjustment of losses, production of business, investment~~
26 ~~of assets, or general servicing of the insurer's business.~~

27 (b) Any domestic insurer that has a management contract or custodial agreement
28 shall file a statement with the initial filing of that contract that discloses (i) criteria on
29 which charges to the insurer are based for that contract; (ii) whether management
30 personnel or other employees of the insurer are to be performing management functions
31 and receiving any remuneration therefor through that contract in addition to the
32 compensation by way of salary received directly from the insurer for their services; (iii)
33 whether the contract transfers substantial control of the insurer or any of the powers
34 vested in the board of directors, by statute, articles of incorporation, or bylaws, or
35 substantially all of the basic functions of the insurer's management; (iv) biographical
36 information for each officer and director of the management firm; and (v) other
37 information concerning the contract or the management or custodian firm as may be
38 included from time to time in any registration forms adopted or approved by the
39 Commissioner. ~~Such~~The statement shall be filed on a form prescribed by the
40 Commissioner.

41 (c) Any domestic insurer that amends or cancels a management contract or
42 custodial agreement filed ~~pursuant to~~under subsection (a) of this section shall notify the
43 Commissioner ~~thereof~~ within 15 business days after the amendment or cancellation. If
44 the contract is amended, the notice shall provide a copy of the amended contract and

1 shall disclose if the amendment affects any of the items in subsection (b) of this section.
2 The Commissioner may prescribe a form to be used to provide notice under this
3 subsection.

4 (d) Any domestic insurer that has a management contract or custodial agreement
5 shall file a statement on or before March 1 of each year, for the preceding calendar year,
6 disclosing (i) total charges incurred by the insurer under the contract; (ii) any salaries,
7 commissions, or other valuable consideration paid by the insurer directly to any officer,
8 director, or shareholder of the management or custodian firm; and (iii) other information
9 concerning the contract or the management or custodian firm as may be included from
10 time to time in any registration forms adopted or approved by the Commissioner. The
11 Commissioner may prescribe a form to be used to provide the information required by
12 this subsection.

13 (e) Any domestic insurer that has a management contract may request an
14 exemption from the filing requirements of this section if the contract is for a group of
15 affiliated insurers on a pooled funds basis or service company management basis, where
16 costs to the individual member insurers are charged on an actually incurred or closely
17 estimated basis. The request for an exemption must be in writing, must explain the basis
18 for the exemption, and must be received by the Commissioner on or before the effective
19 date of the contract. As used in this subsection, "affiliated" has the same meaning as in
20 G.S. 58-19-5(1). Management contracts exempted under this subsection must still be
21 reduced to written form."

22 **SECTION 20.4.** G.S. 58-34-15 reads as rewritten:

23 **"§ 58-34-15. Grounds for disapproval.**

24 (a) The Commissioner must disapprove any management contract or custodial
25 agreement filed under G.S. 58-34-10 if, at any time, the Commissioner finds:

- 26 (1) That the service or management charges are based upon criteria
27 unrelated either to the managed insurer's profits or to the reasonable
28 customary and usual charges for ~~such~~the services or are based on
29 factors unrelated to the value of ~~such~~the services to the insurer; or
- 30 (2) That management personnel or other employees of the insurer are to be
31 performing management functions and receiving any remuneration
32 ~~therefor~~for those functions through the management or service contract
33 in addition to the compensation by way of salary received directly
34 from the insurer for their services; or
- 35 (3) That the contract would transfer substantial control of the insurer or
36 any of the powers vested in the board of directors, by statute, articles
37 of incorporation, or bylaws, or substantially all of the basic functions
38 of the insurance company management; or
- 39 (4) That the contract contains provisions that would be clearly detrimental
40 to the best interest of policyholders, stockholders, or members of the
41 insurer; or
- 42 (5) That the officers and directors of the management or custodial firm are
43 of known bad character or have been affiliated, directly or indirectly,
44 through ownership, control, management, reinsurance transactions, or

1 other insurance or business relations with any person known to have
2 been involved in the improper manipulation of assets, accounts, or
3 reinsurance.

4 (6) That the custodial agreement is not substantially the same as the form
5 adopted by the Commissioner.

6 (b) If the Commissioner disapproves any management ~~contract, contract or~~
7 custodial agreement, notice of ~~such action~~ the disapproval shall be given to the insurer
8 ~~assigning~~ stating the reasons therefor for the disapproval in writing. The Commissioner
9 shall grant any party to the contract a ~~hearing upon request according to G.S. 58-2-~~
10 50-hearing if the party requests a hearing."

11 **SECTION 20.5.** G.S. 58-67-30 reads as rewritten:

12 "**§ 58-67-30. Management and ~~exclusive contracts~~exclusive agreements; custodial**
13 **agreements.**

14 (a) No health maintenance organization shall enter into an exclusive ~~agency~~
15 ~~contract or management contract~~ agency, management, or custodial agreement unless
16 the ~~contract~~ agreement is first filed with the Commissioner and approved under this
17 section within 45 days after filing or such reasonable extended period as the
18 Commissioner shall specify by notice that is given within the 45 day period.

19 (b) The Commissioner shall disapprove a ~~contract~~ an agreement submitted under
20 subsection (a) of this section if ~~he finds that~~ the Commissioner determines that the
21 agreement:

- 22 (1) ~~It subjects~~ Subjects the health maintenance organization to excessive
23 charges;
24 (2) ~~The contract extends~~ Extends for an unreasonable period of time;
25 (3) ~~The contract does~~ Does not contain fair and adequate standards of
26 performance;
27 (4) ~~The persons empowered~~ Enables persons under the contract to manage
28 the health maintenance organization ~~are not~~ who are not sufficiently
29 trustworthy, competent, experienced, and free from conflict of interest
30 to manage the health maintenance organization with due regard for the
31 interests of its enrollees, creditors, or the public; or
32 (5) ~~The contract contains~~ Contains provisions that impair the interests of
33 the organization's enrollees, creditors, or the public."
34

35 **PART XXI. SELF-INSURED WORKERS' COMPENSATION.**

36 **SECTION 21.1.** G.S. 58-47-60(9) reads as rewritten:

37 "(9) "Hazardous financial condition" means that, based on its present or
38 reasonably anticipated financial condition, a person is insolvent or,
39 although not financially impaired or insolvent, is unlikely to be ~~able to~~
40 ~~meet obligations for known claims and reasonably anticipated claims~~
41 ~~or to pay other obligations in the normal course of business.~~ able:

- 42 a. To meet obligations for known claims and reasonably
43 anticipated claims; or
44 b. To pay other obligations in the normal course of business."

1

2 **PART XXVI. EFFECTIVE DATES.**

3 **SECTION 26.** Except as otherwise provided in this act, this act is effective
4 when it becomes law.