

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 722
HOUSE BILL 380

AN ACT TO STRENGTHEN AND UPDATE THE INSURER HOLDING
REGISTRATION AND DISCLOSURE ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 43.

"Insurance Holding Company System Regulatory Act.

"§ 58-560. Findings; purpose; legislative intent.

(a) The General Assembly finds that the public interest and the interests of policyholders are or may be adversely affected when any of the following occur:

- (1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders.
- (2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this State.
- (3) An insurer that is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms that are not fair and reasonable.
- (4) An insurer pays dividends to shareholders that jeopardize the financial condition of such insurer.

(b) The General Assembly declares that the policies and purposes of this Article are to promote the public interest by doing all of the following:

- (1) Requiring disclosure of pertinent information relating to changes in control of an insurer.
- (2) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer.
- (3) Providing standards governing material transactions between an insurer and its affiliates.

"§ 58-561. Definitions.

As used in this Article, unless the context requires otherwise, the following terms have the following meanings:

- (1) An 'affiliate' of or person 'affiliated' with a specific person is a person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.

- (2) 'Control', including the terms 'controlling', 'controlled by', and 'under common control with', means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by G.S. 58-565(j) that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- (3) 'Insurance holding company system' means an entity comprising two or more affiliated persons, one or more of which is an insurer.
- (4) 'Insurer' includes a person subject to Chapters 57 or 57B of the General Statutes. 'Insurer' does not include (1) an agency, authority, or instrumentality of the United States; any of its possessions and territories; the Commonwealth of Puerto Rico; the District of Columbia; nor a state or political subdivision of a state; nor (2) fraternal benefit societies or fraternal orders.
- (5) 'Person' means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert. 'Person' does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.
- (6) A 'security holder' of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, or any other security convertible into or evidencing the right to acquire any of the foregoing.
- (7) A 'subsidiary' of a specified person is an affiliate controlled by such person indirectly through one or more intermediaries or directly.
- (8) 'Voting security' includes any security convertible into or evidencing a right to acquire a voting security.

"§ 58-562. Subsidiaries of insurers.

(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

- (2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries.
- (3) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.
- (4) Management of any investment company subject to or registered pursuant to the federal Investment Company Act of 1940, as amended, including related sales and services.
- (5) Acting as a broker-dealer subject to or registered pursuant to the federal Securities Exchange Act of 1934, as amended.
- (6) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups.
- (7) Rendering other services related to the operations of an insurance business, including actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.
- (8) Ownership and management of assets that the parent corporation could itself own or manage.
- (9) Acting as an administrative agent for a governmental instrumentality that is performing an insurance function.
- (10) Financing of insurance premiums, agents, and other forms of consumer financing.
- (11) Any other business activity that is reasonably ancillary to an insurance business.
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

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

- (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 insurer's admitted assets or fifty percent (50%) of such insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries 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 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;

- (2) Invest any amount in common stock, preferred stock, debt obligation, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer; provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subdivision (b)(1) of this section or in Article 6 of this Chapter applicable to the insurer. For the purposes of this section, 'the total investment of the insurer' includes: (i) any direct investment by the insurer in an asset; and (ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.
- (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 will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (b) of this section are not subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers.

(d) Whether any investment pursuant to subsection (b) of this section meets the applicable requirements of that subsection is to be determined, before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the Commissioner may prescribe, (i) unless after cessation of control such investment meets the requirements for investment under any other provision of this Chapter, or (ii) unless the Commissioner authorizes the insurer to continue the investment.

"§ 58-563. Acquisition of control of or merger with domestic insurer.

(a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer, if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, unless, at the time any such offer, request, or invitation is made, or prior to the acquisition of such securities, such person has filed

with the Commissioner and has simultaneously sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, or acquisition has been approved by the Commissioner in the manner hereinafter prescribed. Provided, however, that the provisions of this paragraph do not apply to any acquisition or proposed acquisition of a domestic insurer's voting securities acquired or sought to be acquired that, when combined with all other voting securities of the domestic insurer acquired directly or indirectly during the preceding 12 months by the person in control and all affiliates of the person in control, do not exceed one percent (1%) of any class or series of the domestic insurer's outstanding voting securities.

Further, no person shall enter into an agreement to merge with or otherwise acquire control of a domestic insurer unless such agreement is conditioned upon the approval of the Commissioner pursuant to this section. No such merger or other acquisition of control shall be effective until a statement containing the information required by this section has been filed with the Commissioner and all other provisions of this section have been complied with and the merger or acquisition of control has been approved by the Commissioner pursuant to this section.

For the purposes of this section a 'domestic insurer' includes any person controlling a domestic insurer. Further, for the purposes of this section, 'person' does not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person that controls an insurance company.

(b) The statement to be filed with the Commissioner under subsection (a) of this section shall be made under oath or affirmation and shall contain the following information:

- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) of this section is to be effected (hereinafter called 'acquiring party'), and: (i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; (ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by sub-subdivision (1)(i) of this subsection.
- (2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control; a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any

- of its subsidiaries or controlling affiliates; and the identity of persons furnishing such consideration.
- (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof have been in existence; and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.
 - (4) Any plans or proposals that each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.
 - (5) The number of shares of any security referred to in subsection (a) of this section that each acquiring party proposes to acquire; the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this section; and a statement as to the method by which the fairness of the proposal was arrived at.
 - (6) The amount of each class of any security referred to in subsection (a) of this section that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.
 - (7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) of this section in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.
 - (8) A description of the purchase of any security referred to in subsection (a) of this section during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.
 - (9) A description of any recommendations to purchase any security referred to in subsection (a) of this section made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.
 - (10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a) of this section, and any related additional soliciting material that has been distributed.
 - (11) The term of any agreement, contract, or understanding made with or proposed to be made with any third party in connection with any

acquisition of control of or merger with a domestic insurer, and the amount of any fees, commissions, or other compensation to be paid to the third party with regard thereto.

- (12) Such additional information as the Commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate, or other group, the Commissioner shall require that the information called for by subdivisions (1) through (12) of this subsection be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the Commissioner shall require that the information called for by subdivisions (1) through (12) of this subsection be given with respect to such corporation, each officer and director of such corporation, and each person who is, directly or indirectly, the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commissioner and sent to such insurer by the filer within two business days after the person learns of such change.

(c) If any offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this section is proposed to be made by means of a registration statement under the Federal Securities Act of 1933, in circumstances requiring the disclosure of similar information under the Federal Securities Exchange Act of 1934, or under any State law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) The Commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon, he finds any of the following:

- (1) After the change of control, the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the kind or kinds of insurance for which it is presently licensed.
- (2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance or tend to create a monopoly in this State.
- (3) The financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

- (4) Any plans or proposals that the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.
- (5) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interests of policyholders of the insurer and of the public to permit the merger or other acquisition of control.
- (6) The acquisition is likely to be detrimental or prejudicial to the insurance-buying public.

(e) The public hearing referred to in subsection (d) of this section shall be held within 120 days after the statement required by subsection (a) of this section is filed, and at least 60 days notice thereof shall be given by the Commissioner to the person filing the statement, to the insurer, and to such other persons as may be designated by the Commissioner. The Commissioner shall make a determination as expeditiously as is reasonably practicable after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral or written arguments; and in connection therewith shall be entitled to conduct discovery proceedings at any time after the statement is filed with the Commissioner pursuant to this section and in the same manner as is presently allowed in the superior courts of this State. In connection with discovery proceedings authorized by this section, the Commissioner is authorized to issue such protective orders and other orders governing the timing and scheduling of discovery proceedings as might otherwise have been issued by a superior court of this State in connection with a civil proceeding. In the event any party fails to make reasonable and adequate response to discovery on a timely basis or fails to comply with any order of the Commissioner with respect to discovery, the Commissioner on his own motion or on motion of any other party or person may order that the hearing be postponed or recessed, shall be convened or reconvened, as the case may be, following proper completion of discovery and reasonable notice to the person filing the statement, to the insurer, and to such other persons as may be designated by the Commissioner.

(f) The Commissioner may retain, at the acquiring person's expense, any attorneys, actuaries, economists, accountants, or other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

(g) The expenses of mailing any notices and other materials required by this section shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the Commissioner an acceptable bond or other deposit in a amount to be determined by the Commissioner.

(h) The provisions of this section do not apply to any offer, request, invitation, agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not

having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(i) The following are violations of this section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b) of this section; or

(2) The effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer, unless the Commissioner has given his approval thereto.

(j) The courts of this State are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the Commissioner under this section; and each such person is deemed to have performed acts equivalent to and constituting an appointment by such person of the Commissioner to be his true and lawful attorney upon whom may be served all legal process in any action, suit, or proceeding arising out of violations of this section. Copies of all such process shall be handled in accordance with the provisions of G.S. 58-153, 58-153.1, and 58-154.

"§ 58-564. Waiver of requirements by Commissioner.

Any provisions of this Article relating to the filing or production of data, documents, statements, reports; or any other requirements, including requirements of hearings or times of notices, may be waived by the Commissioner in his discretion, with the consent of the domestic insurer, including any person controlling the domestic insurer.

"§ 58-565. Registration of insurers.

(a) Every insurer that is licensed to do business in this State and that is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and G.S. 58-566(a). Such insurer shall also file a copy of its registration statement and any amendments thereto in each state in which that insurer is authorized to do business if requested by the insurance regulator of that state. Any insurer that is subject to registration under this section shall register within 30 days after it becomes subject to registration, and an amendment to the registration statement shall be filed by March 1 of each year for any changes that may have occurred during the previous calendar year; unless the Commissioner for good cause shown extends the time for registration or filing, and then within such extended time. The Commissioner may require any insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulator of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file the registration statement on a form prescribed by the Commissioner, which shall contain the following current information:

(1) The bylaws, capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer.

- (2) The identity and relationship of every member of the insurance holding company system.
- (3) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between such insurer and its affiliates or other third parties where indicated:
 - a. Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.
 - b. Purchases, sales, or exchange of assets.
 - c. Transactions not in the ordinary course of business.
 - d. Guarantees or undertakings for the benefit of an affiliate or other third party that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.
 - e. All management agreements, service contracts, and cost-sharing arrangements.
 - f. Reinsurance agreements.
 - g. Dividends and other distributions to shareholders.
 - h. Consolidated tax allocation agreements.
- (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.
- (5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner.

(c) No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purposes of this section. Unless the Commissioner by rule or order provides otherwise, all sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (1/2%) or less of an insurer's admitted assets as of the 31st day of December next preceding are not material for the purposes of this section.

(d) Subject to G.S. 58-566(b), each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof.

(e) Any person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this Article.

(f) The Commissioner shall terminate the registration of any insurer that demonstrates that it no longer is a member of an insurance holding company system.

(g) The Commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(h) The Commissioner may allow an insurer that is authorized to do business in this State and that is part of an insurance holding company system to register on behalf of any affiliated insurer that is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(i) The provisions of this section do not apply to any insurer, information, or transaction if and to the extent that the Commissioner by rule or order exempts the same from the provisions of this section.

(j) Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section that may arise out of the insurer's relationship with such person unless the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(k) The failure to file a registration statement or any summary of the registration statement thereto required by this section within the time specified for such filing is a violation of this section.

"§ 58-566. Standards and management of an insurer within a holding company system.

(a) Transactions within a holding company system to which an insurer subject to registration is a party are subject to all of the following standards:

- (1) The terms shall be fair and reasonable.
- (2) Charges or fees for services performed shall be reasonable.
- (3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.
- (4) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.
- (5) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the Commissioner permits, and the Commissioner has not disapproved it within such period:

- (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided such transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the 31st day of December next preceding.
- (2) Loans or extensions of credit to any person who is not affiliated, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the 31st day of December next preceding.
- (3) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.
- (4) All management agreements that would place control of the insurer outside of the insurance holding company system.
- (5) All service contracts or cost-sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in subdivision (1) of this subsection.
- (6) Any material transactions, specified by rule, that the Commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section authorizes or permits any transactions that, in the case of an insurer, not a member of the same holding company system, would be otherwise contrary to law. A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the Commissioner determines that such separate transactions were entered into over any 12-month period for such purpose, he may exercise his authority under G.S. 58-570. The Commissioner, in reviewing

transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders. The Commissioner shall be notified within 30 days after any investment of a domestic insurer in any one corporation if, as a result of any such investment, the total investment in such corporation by the insurance holding company system exceeds ten percent (10%) of such corporation's voting securities.

(c) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment or (ii) the Commissioner has approved such payment within such 30-day period.

For the purposes of this section, an 'extraordinary dividend' or 'extraordinary distribution' includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (i) ten percent (10%) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer; or the greater of (i) the net income or (ii) the net investment income, if such insurer is not a life insurer, for the 12-month period ending the 31st day of December next preceding; but does not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer may carry forward income from the previous two calendar years that has not already been paid out as dividends.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the Commissioner has approved the payment of such a dividend or distribution or (ii) the Commissioner has not disapproved such payment within the 30-day period referred to above.

(d) For the purposes of this Article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, all of the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
- (2) The extent to which the insurer's business is diversified among the several kinds of insurance.
- (3) The number and size of risks insured in each kind of insurance.
- (4) The extent of the geographic dispersion of the insurer's insured risks.
- (5) The nature and extent of the insurer's reinsurance program.
- (6) The quality, diversification, and liquidity of the insurer's investment portfolio.

- (7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.
- (8) The surplus as regards policyholders maintained by other comparable insurers.
- (9) The adequacy of the insurer's reserves.
- (10) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

"§ 58-567. Examination.

(a) Subject to the limitation contained in this section and in addition to the powers that the Commissioner has under other provisions of this Chapter relating to the examination of insurers, the Commissioner also has the power to order any insurer registered under G.S. 58-565 or any acquiring party to produce such records, books, or other information in the possession of the insurer or its affiliates or the acquiring party as are reasonably necessary to ascertain the financial condition of such insurer or acquiring party or to determine compliance with this Chapter. In the event such insurer or acquiring party fails to comply with such order, the commissioner shall have the power to examine such insurer or its affiliates or such acquiring party to obtain such information.

(b) The Commissioner may retain, at the expense of the registered insurer or acquiring party that is being examined, such attorneys, actuaries, economists, accountants, and other experts not otherwise a part of the Commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(c) Each registered insurer or acquiring party producing records, books, or papers for examination pursuant to subsection (a) of this section is liable for and shall pay the expenses of such examination in accordance with G.S. 58-16 and G.S. 58-63.

(d) The Commissioner shall exercise his power under subsection (a) of this section only if the examination of the insurer or acquiring party under other provisions of this Chapter is inadequate or the interests of the policyholders of such insurer may be adversely affected.

"§ 58-568. Confidential treatment.

All information, documents, and copies thereof obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to G.S. 58-567, and all information reported pursuant to G.S. 58-565 and G.S. 58-566, shall be given confidential treatment; shall not be subject to subpoena; and shall not be made public by the Commissioner, the NAIC, or any other person, except to insurance regulators of other states, without the prior written consent of the insurer or acquiring party to which it pertains unless the Commissioner, after giving the insurer and its affiliates or the acquiring party that would be affected thereby notice and opportunity to be heard, determines that the interest of the insurer's policyholders or the

public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he considers appropriate.

"§ 58-569. Injunctions; prohibitions against the voting of securities; sequestration of voting securities.

(a) Whenever it appears to the Commissioner that any person has committed or is about to commit a violation of this Article or of any rule or order of the Commissioner under this Article, the Commissioner may apply to the Superior Court of Wake County for an order enjoining such person from violating or continuing to violate this Article or any such rule or order; and for such other equitable relief as the nature of the case and the interest of the domestic insurer's policyholders or the public may require.

(b) No security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of the provisions of this Article or of any rule or order of the Commissioner under this Article, may be voted at any shareholder's meeting nor may be counted for quorum purposes; and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding. No action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this State have so ordered. If an insurer or the Commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Article or of any rule or order issued by the Commissioner under this Article, the insurer or the Commissioner may apply to the Superior Court of Wake County to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of G.S. 58-563 or any rule or order of the Commissioner under that section to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders or the public may require.

(c) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Article or any rule or order of the Commissioner under this Article, the Superior Court of Wake County may, on such notice as the court considers appropriate and upon the application of the insurer or the Commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such order with respect thereto as may be appropriate to effectuate the provisions of this Article

Notwithstanding any other provisions of law, for the purposes of this Article the sites of the ownership of the securities of domestic insurers are in this State.

"§ 58-570. Sanctions.

(a) Any person failing, without just cause, to file any registration statement as required in this Article shall pay, after notice and hearing, civil penalty of one hundred dollars (\$100.00) for each day's delay, not to exceed a total penalty of one thousand dollars (\$1,000), to the Commissioner, who shall forward the clear proceeds to the General Fund of this State.

(b) Every director or officer of an insurance holding company system who knowingly and willfully violates, participates in, or assents to, or who knowingly and

willfully permits any of the officers or agents of the insurer to engage in transactions or make investments that have not been properly reported or submitted pursuant to G.S. 58-565(a), 58-566(b), or 58-566(c), or that violate this Article, shall pay, in his individual capacity, after notice and hearing, a civil penalty of one hundred dollars (\$100.00) per violation, not to exceed a total penalty of one thousand dollars (\$1,000), to the Commissioner, who shall forward the clear proceeds to the General Fund of this State.

(c) Whenever it appears to the Commissioner that any insurer subject to this Article or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract that is subject to G.S. 58-566 and that would not have been approved had such approval been requested, the Commissioner may order the insurer to immediately cease and desist from any further activity under that transaction or contract. After notice and hearing the Commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors, or the public.

(d) Whenever it appears to the Commissioner that any insurer or any director, officer, employee, or agent thereof has knowingly and willfully committed a violation of this Article, the Commissioner may cause criminal proceedings to be instituted by the Superior Court of Wake County against such insurer or the responsible director, officer, employee, or agent thereof. Any insurer that knowingly and willfully violates this Article may be fined not more than one thousand dollars (\$1,000). Any individual who knowingly and willfully violates this Article is guilty of a Class J felony and is subject to a fine in his individual capacity, imprisonment, or both, in the discretion of the court.

(e) Any officer, director, or employee of an insurance holding company system who knowingly and willfully subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the Commissioner in the performance of his duties under this Article, is guilty of a Class J felony, and is subject to a fine, imprisonment, or both, in the discretion of the court. Any fines imposed shall be paid by the officer, director, or employee in his individual capacity.

"§ 58-571. Receivership.

Whenever it appears to the Commissioner that any person has committed a violation of this Article that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the Commissioner may proceed as provided in Article 46 of this Chapter.

"§ 58-572. Recovery.

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under such order has a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary or subsidiaries to a director, officer, or employee, where the distribution or payment pursuant to (i) or (ii) above is

made at any time during the one year preceding the petition for liquidation or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d) of this section.

(b) No such distribution is recoverable if the parent or affiliate shows that when paid such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person that was a parent corporation or holding company or a person that otherwise controlled the insurer or affiliate at the time such distributions were paid is liable up to the amount of distributions or payments under subsection (a) of this section such person received. Any person who otherwise controlled the insurer at the time such distributions were declared is liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the insurer to pay its contractual obligations and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it pursuant to that subsection, its parent corporation, holding company, or person who otherwise controlled it at the time that the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

"§ 58-573. Revocation, suspension, or nonrenewal of insurer's license.

Whenever it appears to the Commissioner that any person has committed a violation of this Article that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

"§ 58-574. Judicial review; mandatory injunction or writ of mandamus.

(a) Any person aggrieved by any order made by the Commissioner pursuant to this Article may appeal in accordance with G.S. 58-9.3.

(b) Any person aggrieved by any failure of the Commissioner to act or make a determination required by this Article may petition the Superior Court of Wake County for a mandatory injunction or a writ of mandamus directing the Commissioner to act or make such determination forthwith."

Sec. 2. Article 12A of Chapter 58 of the General Statutes is repealed.

Sec. 3. G.S. 58-86.3 reads as rewritten:

"§ 58-86.3. Exchange of securities.

Any domestic insurance company with capital stock (hereinafter referred to as "domestic company") may adopt a plan of exchange providing for the exchange by its shareholders of their stock in the domestic company for (i) shares of stock issued by any

~~other domestic stock insurance company or other domestic stock corporation organized or reorganized under the laws of this State—such other corporation being hereinafter referred to as the "acquiring corporation"; (ii) other securities issued by the acquiring corporation; (iii) cash; (iv) other consideration; (v) any combination of such stock, such other securities, cash or other consideration. For the purpose of this Article, a "domestic company" or "domestic stock insurance company" shall mean a business corporation or a stock insurance company, respectively, organized and existing under the laws of the State of North Carolina.—Any domestic stock insurance company may adopt a plan of exchange providing for the exchange by its shareholders of their stock in the domestic company for shares of stock issued by any other stock insurance company or other stock corporation (hereinafter referred to as the 'acquiring corporation'); other securities issued by the acquiring corporation; cash; other consideration; or any combination thereof. For the purpose of this Article, 'domestic stock insurance company' means a stock insurance company organized and existing under the laws of this State."~~

Sec. 3.1. Section 36 of Chapter 485 of the 1989 Session Laws reads as rewritten:

"Sec. 36. G.S. 58-79.1(c) is amended by adding a new subdivision to read:

'(11) Electronic computer or data processing apparatus, including software, and equipment constituting a data processing, record keeping, or cost of such system or systems is at least twenty-five thousand dollars (\$25,000), but not more than two percent (2%) of its admitted assets, which cost shall be amortized in full over a period not to exceed 10 calendar years."

Sec. 4. In the event any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.