

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 513
SENATE BILL 441

AN ACT TO PROVIDE FOR INSURER HOLDING COMPANY REGISTRATION AND
DISCLOSURE.

The General Assembly of North Carolina do enact:

Section 1. Subchapter II of Chapter 58 of the General Statutes is hereby amended by adding between Article 12 and Article 13 thereof a new Article to be designated as Article 12A and reading as follows:

"Article 12A

"Insurer Holding Registration and Disclosure Act

"§ 58-124.1. **Definitions.** — As used in this act, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

- (1) Affiliate. An 'affiliate' of, or person 'affiliated' with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- (2) Commissioner. The term 'Commissioner' shall mean the Commissioner of Insurance of North Carolina, his deputies, or the Department of Insurance of North Carolina, as appropriate.
- (3) Control. The term 'control' (including the terms 'controlling', 'controlled by' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten per cent (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. 58-124.2(i) 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.
- (4) Insurance holding company system. An 'insurance holding company system' consists of two or more affiliated persons, one or more of which is an insurer.
- (5) Insurer. The term 'insurer' shall have the same meaning as set forth in G.S. 58-2(3) except that it shall not include (1) agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state, (2) fraternal benefit societies, (3) nonprofit

- medical and hospital service associations, or (4) nonprofit dental service corporations.
- (6) Person. A 'person' is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.
 - (7) Subsidiary. A 'subsidiary' of a specified person is an affiliate controlled by such person directly, or indirectly, through one or more intermediaries.
 - (8) Voting security. The term 'voting security' shall include any security convertible into or evidencing a right to acquire a voting security.

"§ 58-124.2. Registration of Insurers. — (a) Registration. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty (60) days after the effective date of this Article or fifteen (15) days after it becomes subject to registration, whichever is later, unless the Commissioner for good cause shown extends the time for registration, and then within such extended time. The Commissioner may require any authorized insurer which is a member of a holding company system which 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 regulatory authority of its domiciliary jurisdiction.

(b) Information and form required. Every insurer subject to registration shall file a registration statement on a form provided by the Commissioner, which shall contain current information about:

- (1) the capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (2) the identity of every member of the insurance holding company system;
- (3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:
 - (i) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 - (ii) purchases, sales, or exchanges of assets;
 - (iii) transactions not in the ordinary course of business;
 - (iv) guarantees or undertakings for the benefit of an affiliate which 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;
 - (v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and
 - (vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company; and
- (4) 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) Materiality. No information need be disclosed on the registration statement filed pursuant to G.S. 58-124.2(b) if such information is not material for the purposes of this Section. Unless the Commissioner by rule, regulation or order provides otherwise, sales, purchases,

exchanges, loans or extensions of credit, or investments, involving one-half of 1% or less of an insurer's admitted assets as of the 31st day of December next preceding, shall not be deemed material for purposes of this Section.

(d) Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to G.S. 58-124.3(c), each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

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

(f) Consolidated filing. The Commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

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

(h) Exemptions. The provisions of this Section shall not apply to any insurer, information or transaction if and to the extent that the Commissioner by rule, regulation, or order shall exempt the same from the provisions of this Section.

(i) Disclaimer. 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 which may arise out of the insurer's relationship with such person unless and until 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.

(j) Violations. The failure to file a registration statement or any amendment thereto required by this Section within the time specified for such filing shall be a violation of this Section.

"§ 58-124.3. Standards. — (a) Transactions with affiliates. Material transactions by registered insurers with their affiliates shall be subject to the following standards:

- (1) the terms shall be fair and reasonable;
- (2) the books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions; and
- (3) 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) Adequacy of surplus. For 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, 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 lines of insurance;
- (3) the number and size of risks insured in each line of business;
- (4) the extent of the geographical 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; and
- (10) the quality and liquidity of investments in subsidiaries.

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.

(c) Dividends and other distributions. No insurer subject to registration under G.S. 58-124.2 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 shall have approved such payment within such 30-day period.

For purposes of this Section, an extraordinary dividend or 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 twelve months exceeds the greater of (i) 10% of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insured's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which 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 dividend or distribution or (ii) the Commissioner has not disapproved such payment within the 30-day period referred to above.

"§ 58-124.4. Examination. — (a) Power of Commissioner. Subject to the limitation contained in this Section and in addition to the powers which the Commissioner has under G.S. 58-16, relating to the examination of insurers, the Commissioner shall also have the power to order any insurer registered under G.S. 58-124.2 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the Commissioner shall have the power to examine such affiliates to obtain such information.

(b) Purpose and limitation of examination. The Commissioner shall exercise his power under subsection (a) above only if the examination of the insurer under G.S. 58-16 is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) Use of consultants. The Commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as shall be reasonably necessary to assist in the conduct of the

examination under subsection (a) above. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(d) Expenses. Each registered insurer producing for examination records, books and papers pursuant to subsection (a) above shall be liable for and shall pay the expense of such examination in accordance with the provisions of G.S. 58-16.

"§ 58-124.5. 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. 58-124.4, and all information reported pursuant to G.S. 58-124.2, shall be given confidential treatment and shall not be made public by the Commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains, unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders 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 may deem appropriate.

"§ 58-124.6. Rules and regulations. — The Commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this Article.

"§ 58-124.7. Injunctions. — Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Article or of any rule, regulation, or order issued by the Commissioner hereunder, the Commissioner may apply to the Superior Court for the county in which the principal office of the insurer is located or if such insurer has no such office in this State then to the Superior Court for Wake County for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this Article or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

"§ 58-124.8. Criminal proceedings. — Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Article, the Commissioner may cause criminal proceedings to be instituted in the court having criminal jurisdiction for the county in which the principal office of the insurer is located or if such insurer has no such office in the State, then in the criminal court for Wake County against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Article may be fined not more than five hundred dollars (\$500.00). Any individual who willfully violates this Article may be fined not more than five hundred dollars (\$500.00) or, if such willful violation involves the deliberate perpetration of a fraud upon the Commissioner, imprisoned not more than two (2) years, or both.

"§ 58-124.9. Receivership. — Whenever it appears to the Commissioner that any person has committed a violation of this Article which 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 under G.S. 1-507.1 and G.S. 58-155.11 to take possession of the property of such domestic insurer and to conduct the business thereof.

"§ 58-124.10. Revocation, suspension, or nonrenewal of insurer's license. — Whenever it appears to the Commissioner that any person has committed a violation of this Article which 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, determine to suspend, revoke or refuse to renew such insurer's license or authority 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.

"§ 58-124.11. **Judicial review; mandamus.** — (a) Any person aggrieved by any order made by the Commissioner pursuant to this act may appeal therefrom in accordance with the provisions of 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 writ in the nature of a mandamus or a peremptory mandamus directing the Commissioner to act or make such determination forthwith."

Sec. 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 3. This act shall be in full force and effect on and after July 1, 1971.

In the General Assembly read three times and ratified, this the 7th day of June, 1971.