

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 288
Committee Substitute Favorable 4/15/15

Short Title: Insurance Technical Changes.-AB

(Public)

Sponsors:

Referred to:

March 19, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAINTAIN NAIC ACCREDITATION OF THE DEPARTMENT OF
3 INSURANCE BY MAKING REVISIONS TO THE LAWS GOVERNING INSURANCE
4 COMPANY HOLDING SYSTEMS, RISK-BASED CAPITAL REQUIREMENTS FOR
5 LIFE INSURERS, AND CORPORATE GOVERNANCE REQUIREMENTS FOR RISK
6 RETENTION GROUPS, AS RECOMMENDED BY THE DEPARTMENT OF
7 INSURANCE.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT**
11 **REVISIONS**

12 **SECTION 1.1.** G.S. 58-19-1 reads as rewritten:

13 "**§ 58-19-1. Findings; purpose; legislative intent.**

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

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

25"

26 **SECTION 1.2.(a)** Subdivisions (3) through (7) of G.S. 58-19-5 are recodified as
27 subdivisions (11) through (15) of that section. Subdivision (8) of G.S. 58-19-5 is recodified as
28 subdivision (17) of that section.

29 **SECTION 1.2.(b)** G.S. 58-19-5, as amended by subsection (a) of this section,
30 reads as rewritten:

31 "**§ 58-19-5. Definitions.**

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

- 34 (1) An "affiliate" of or person "affiliated" with a specific ~~person is a~~ person. - A
35 person that indirectly through one or more intermediaries or directly



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- 1 controls, is controlled by, or is under common control with the person
2 specified.
- 3 (2) "Control", including the terms "controlling", "controlled by", and "~~under~~
4 ~~common control with~~", "under common control with." – means ~~the~~The direct
5 or indirect possession of the power to direct or cause the direction of the
6 management and policies of a person, whether through the ownership of
7 voting securities, by contract other than a commercial contract for goods or
8 nonmanagement services, or otherwise. Control is presumed to exist if any
9 person directly or indirectly owns, controls, holds with the power to vote, or
10 holds proxies representing, ten percent (10%) or more of the voting
11 securities of any other person. This presumption may be rebutted by a
12 showing made in the manner provided by G.S. 58-19-25(j) that control does
13 not exist in fact. The Commissioner may determine, after furnishing all
14 persons in interest notice and opportunity to be heard and making specific
15 findings of fact to support such determination, that control exists in fact,
16 notwithstanding the absence of a presumption to that effect.
- 17 (3) Enterprise risk. – Any activity, circumstance, event, or series of events
18 involving one or more affiliates of an insurer that, if not remedied promptly,
19 is likely to have a material adverse effect upon the financial condition or
20 liquidity of the insurer or its insurance holding company system as a whole,
21 including, but not limited to, anything that would cause the insurer's
22 risk-based capital to fall into company action level as set forth in Article 12
23 of this Chapter or would cause the insurer to be in a hazardous financial
24 condition as set forth in G.S. 58-30-60.
- 25 (4) Executive officer. – A chief executive officer, chief operating officer, chief
26 financial officer, treasurer, secretary, controller, and any other individual
27 performing functions corresponding to those performed by the foregoing
28 officers under whatever title.
- 29 (5) Form A. – The statement regarding the acquisition of control of or merger
30 with a domestic insurer that is required to be filed with the Commissioner
31 pursuant to G.S. 58-19-15.
- 32 (6) Form B. – The insurance holding company system annual registration
33 statement that is required to be filed with the Commissioner pursuant to
34 G.S. 58-19-25.
- 35 (7) Form C. – The summary of changes to the insurance company system annual
36 registration statement that is required to be filed with the Commissioner
37 pursuant to G.S. 58-19-25.
- 38 (8) Form D. – The prior notice of a transaction that is required to be filed with
39 the Commissioner pursuant to G.S. 58-19-30(b).
- 40 (9) Form E. – The pre-acquisition notification that is required to be filed with
41 the Commissioner pursuant to G.S. 58-19-15(f).
- 42 (10) Form F. – The annual enterprise risk report required to be filed with the
43 Commissioner pursuant to G.S. 58-19-25(l).
- 44 (11) ~~"Insurance holding company system" means an~~Insurance holding company
45 system. – An entity comprising two or more affiliated persons, one or more
46 of which is an insurer.
- 47 (12) ~~"Insurer" includes~~Insurer. – As defined in G.S. 58-1-5(3), and includes a
48 person subject to Articles 65 and 66 or 67 of this Chapter. "Insurer" does not
49 include (1) an agency, authority, or instrumentality of the United States; any
50 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.

(13) ~~"Person" means an~~ Person. – 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.

(14) A "security holder" of a specified ~~person is one~~ person. – 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.

(15) A "subsidiary" of a specified ~~person is an~~ person. – An affiliate controlled by such person indirectly through one or more intermediaries or directly.

(16) Ultimate controlling person. – A person not controlled by any other person.

(17) ~~"Voting security" includes~~ Voting security. – Includes any security convertible into or evidencing a right to acquire a voting security."

SECTION 1.3.(a) Subsections (b) through (j) of G.S. 58-19-5 are recodified as subsections (g) through (o) of that section, subsections (a1) through (a3) of G.S. 58-19-15 are recodified as subsections (b) through (d) of that section, and subdivision (g)(12) of G.S. 58-19-5 is recodified as subdivision (g)(14) of that section.

SECTION 1.3.(b) G.S. 58-19-15, as amended by subsection (a) of this section, reads as rewritten:

"§ 58-19-15. 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 enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer, if, after the consummation thereof, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless the offer, request, invitation, ~~agreement, agreement~~ entered into, or acquisition is conditioned upon the approval of the ~~Commissioner~~ Commissioner, and furnished on a Form A as prescribed by the Commissioner under this section. No such merger or other acquisition of control is 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 under this section. The statement containing the information required by this section shall also be filed with the domestic insurer when it is filed with the Commissioner.

(b) For the purposes of this section a "domestic insurer" includes any person controlling a domestic ~~insurer, insurer, unless the person, as determined by the Commissioner, is either~~ directly or through its affiliates primarily engaged in business other than insurance. 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.

(c) Any acquisition of control of a domestic insurer must be completed not later than 90 days after the date of the Commissioner's order approving the acquisition under this section, unless the Commissioner grants an extension in writing on a showing of good cause for the delay. Any increase in a company's capital and surplus required under this Article as a result of the change of control of a domestic insurer must be completed not later than 90 days after the date of the Commissioner's order approving the change of control and before the company writes any new insurance business.

1 (d) If the deadlines for completion in subsection ~~(a2)~~(c) of this section are not met, the
2 person seeking to acquire control of the domestic insurer must resubmit the statement required
3 by subsection ~~(b)~~(g) of this section, and the Commissioner may reconsider approval of
4 acquisition of control under this section.

5 (e) For purposes of this section, any controlling person of the domestic insurer seeking
6 to divest its controlling interest in the domestic insurer, in any manner, shall file with the
7 Commissioner, with a copy to the insurer, confidential notice of its proposed divesture at least
8 30 days prior to the cessation of control. The Commissioner shall determine those instances in
9 which the party or parties seeking to divest or to acquire a controlling interest in an insurer, will
10 be required to file for and obtain approval of the transaction. The information shall remain
11 confidential until the conclusion of the transaction unless the Commissioner, in his discretion
12 determines that confidential treatment will interfere with enforcement of this section. If the
13 statement referred to in subsection (a) of this section is otherwise filed, this subsection shall not
14 apply.

15 (f) With respect to a transaction subject to this section, the acquiring person must also
16 file a pre-acquisition notification with the Commissioner on a Form E as prescribed by the
17 Commissioner. In addition to the information required by the Form E, the Commissioner may
18 require an expert opinion as to the competitive impact of the proposed acquisition at the
19 acquiring person's expense. A failure to file the pre-acquisition notification may subject the
20 insurer or other person who fails to make the filing and who also fails to demonstrate a
21 good-faith effort to comply with this requirement to a fine of not more than fifty thousand
22 dollars (\$50,000).

23 (g) The statement to be filed with the Commissioner under subsection (a) of this section
24 shall be furnished on a Form A as prescribed by the Commissioner, made under oath or
25 affirmation ~~affirmation~~, and shall contain the following information:

- 26 ...
- 27 (11) The term of any agreement, contract, or understanding made with or
28 proposed to be made with any third party in connection with any acquisition
29 of control of or merger with a domestic insurer, and the amount of any fees,
30 commissions, or other compensation to be paid to the third party with regard
31 thereto.
- 32 (12) An agreement by the person required to file the statement referred to in
33 subsection (a) of this section that it will provide the annual report, specified
34 in G.S. 58-19-25, for so long as control exists.
- 35 (13) An acknowledgement by the person required to file the statement referred to
36 in subsection (a) of this section that the person and all subsidiaries within its
37 control in the insurance holding company system will provide information to
38 the Commissioner upon request as necessary to evaluate enterprise risk to
39 the insurer.
- 40 (14) Such additional information as the Commissioner may by rule prescribe as
41 necessary or appropriate for the protection of policyholders of the insurer or
42 in the public interest.

43 If the person required to file the statement referred to in subsection (a) of this section is a
44 partnership, limited partnership, syndicate, or other group, the Commissioner shall require that
45 the information called for by subdivisions (1) through ~~(12)~~(14) of this subsection be given with
46 respect to each partner of such partnership or limited partnership, each member of such
47 syndicate or group, and each person who controls such partner or member. If any such partner,
48 member, or person is a corporation or the person required to file the statement referred to in
49 subsection (a) of this section is a corporation, the Commissioner shall require that the
50 information called for by subdivisions (1) through ~~(12)~~(14) of this subsection be given with
51 respect to such corporation, each officer and director of such corporation, and each person who

1 is, directly or indirectly, the beneficial owner of more than ten percent (10%) of the outstanding
2 voting securities of such corporation.

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

8 ...

9 (j) The public hearing referred to in subsection ~~(d)~~(i) of this section shall be held within
10 120 days after the statement required by subsection (a) of this section is filed, and the
11 Commissioner shall give at least 30 days notice of the hearing to the person filing the
12 statement, to the insurer, and to such other persons as may be designated by the Commissioner.
13 The Commissioner shall make a determination as expeditiously as is reasonably practicable
14 after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer,
15 any person to whom notice of hearing was sent, and any other person whose interest may be
16 affected by the hearing shall have the right to present evidence, examine and cross-examine
17 witnesses, and offer oral or written arguments; and in connection therewith shall be entitled to
18 conduct discovery proceedings at any time after the statement is filed with the Commissioner
19 under this section and in the same manner as is presently allowed in the superior courts of this
20 State. In connection with discovery proceedings authorized by this section, the Commissioner
21 may issue such protective orders and other orders governing the timing and scheduling of
22 discovery proceedings as might otherwise have been issued by a superior court of this State in
23 connection with a civil proceeding. If any party fails to make reasonable and adequate response
24 to discovery on a timely basis or fails to comply with any order of the Commissioner with
25 respect to discovery, the Commissioner on the Commissioner's own motion or on motion of
26 any other party or person may order that the hearing be postponed, recessed, convened, or
27 reconvened, as the case may be, following proper completion of discovery and reasonable
28 notice to the person filing the statement, to the insurer, and to such other persons as may be
29 designated by the Commissioner.

30 If the proposed acquisition of control will require the approval of the insurance
31 commissioners of more than one state, the public hearing referred to in this subsection may be
32 held on a consolidated basis upon request of the person filing the statement referred to in
33 subsection (a) of this section. Such person shall file the statement referred to in subsection (a)
34 of this section with the NAIC within five days of making the request for a public hearing. A
35 commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of
36 the opt out within 10 days of the receipt of the statement referred to in subsection (a) of this
37 section. A hearing conducted on a consolidated basis shall be public and shall be held within
38 the United States before the commissioners of the states in which the insurers are domiciled.
39 Such commissioners shall hear and receive evidence. A commissioner may attend such hearing,
40 in person or by telecommunication.

41 ...

42 (n) ~~The~~ Each of the following are violations of this section:

- 43 (1) The failure to file any statement, amendment, or other material required to
44 be filed pursuant to subsection (a) or ~~(b)~~(g) of this section; ~~or section.~~
45 (2) The effectuation or any attempt to effectuate an acquisition of control ~~of~~ of,
46 divestiture of, or merger with a domestic insurer, unless the Commissioner
47 has given his approval ~~thereto~~ of the acquisition, divestiture, or merger.

48 (o) The courts of this State are vested with jurisdiction over every person not resident,
49 domiciled, or authorized to do business in this State who files a statement with the
50 Commissioner under this section; and the overall actions involving such person arising out of
51 violations of this section and each such person is deemed to have performed acts equivalent to

1 and constituting an appointment by such person of the Commissioner to be his true and lawful
2 attorney upon whom may be served all legal process in any action, suit, or proceeding arising
3 out of violations of this section. Copies of all such process shall be handled in accordance with
4 the provisions of G.S. 58-16-30, 58-16-35, and 58-16-45."

5 **SECTION 1.4.** G.S. 58-19-25 reads as rewritten:

6 **"§ 58-19-25. Registration of insurers.**

7 (a) Every insurer that is ~~licensed~~authorized to do business in this State and that is a
8 member of an insurance holding company system shall register with the
9 ~~Commissioner~~Commissioner pursuant to G.S. 58-19-25(b), except a foreign insurer subject to
10 the registration requirements and standards adopted by statute or regulation in the jurisdiction
11 of its domicile that are substantially similar to those contained in:

- 12 (1) This section.
- 13 (2) G.S. 58-19-30(a), G.S. 58-19-30(c), and G.S. 58-19-30(d).
- 14 (3) G.S. 58-19-30(b) or a statutory or regulatory provision such as the
15 following: Each registered insurer shall keep current the information
16 required to be disclosed in its registration statement by reporting all material
17 changes or additions within 15 days after the end of the month in which it
18 learns of each change or addition. The insurer shall also file a copy of its
19 registration statement and any amendments to the statement in each state in
20 which that insurer is authorized to do business, if requested by the insurance
21 regulator of that state.

22 Any insurer that is subject to registration under this section shall register within 30 days after it
23 becomes subject to registration, and an amendment to the registration statement shall be filed
24 by April 1 of each year for the previous calendar year; unless the Commissioner for good cause
25 shown extends the time for registration or filing, and then within the extended time. All
26 registration statements shall contain a summary, on a ~~form~~Form C as prescribed by the
27 Commissioner, outlining all items in the current registration statement representing changes
28 from the prior registration statement. The Commissioner may require any insurer that is ~~a~~an
29 insurance member of a holding company system that is not subject to registration under this
30 section to furnish a copy of the registration statement or other information filed by the
31 insurance company with the insurance regulator of its domiciliary jurisdiction.

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

- 35 ...
- 36 (6) If requested by the Commissioner, the insurer shall include financial
37 statements of or within an insurance holding company system, including all
38 affiliates. Financial statements may include, but are not limited to, annual
39 audited financial statements filed with the United States Securities and
40 Exchange Commission pursuant to the Securities Act of 1933, as amended,
41 or the Securities Exchange Act of 1934, as amended. An insurer required to
42 file financial statements pursuant to this subdivision may satisfy the request
43 by providing the Commissioner with the most recently filed parent
44 corporation financial statements that have been filed with the United States
45 Securities and Exchange Commission.
 - 46 (7) Statements that the insurer's board of directors oversees corporate
47 governance and internal controls and that the insurer's officers or senior
48 management have approved, implemented, and continue to maintain and
49 monitor corporate governance and internal control procedures.
 - 50 (8) Any other information required by the Commissioner by rule or regulation.

1 (c) No information need be disclosed on the registration statement filed pursuant to
2 subsection (b) of this section if such information is not material for the purposes of this section.
3 Unless the Commissioner by rule or order provides otherwise, all sales, purchases, exchanges,
4 loans or extensions of credit, investments, or guarantees involving one-half of one percent
5 (1/2%) or less of an insurer's admitted assets as of the preceding December 31 are not material
6 for the purposes of this section.

7 (d) Subject to G.S. 58-7-130(b) and G.S. 58-19-30(c), each domestic insurer shall report
8 to the Commissioner all dividends and other distributions to shareholders within five business
9 days following the declaration thereof and at least 30 days before the payment thereof. ~~The~~
10 ~~Commissioner may adopt rules to further the requirements of this section of the dividend or~~
11 ~~distribution by providing the information set forth in G.S. 58-19-30(e). A prior notification of~~
12 an ordinary dividend or any other ordinary distribution required under this subsection shall be
13 deemed to be incomplete unless all of the information required by G.S. 58-19-30(e) has been
14 included. The Commissioner shall consider the factors set forth in G.S. 58-19-30(d) in his
15 review of dividends or other distributions to shareholders pursuant to this subsection. The
16 Commissioner may adopt rules to further the requirements of this section.

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

20 (f) The Commissioner shall terminate the registration of any insurer that demonstrates
21 that it no longer is a member of an insurance holding company system. A termination of
22 registration shall include the information set forth in subdivision (j)(1) of this section and shall
23 be deemed to have been granted unless the Commissioner, within 30 days after receipt of the
24 request, notifies the registrant otherwise.

25 (g) The Commissioner may require or allow two or more affiliated insurers subject to
26 registration under this section to file a consolidated ~~registration statement or alternative~~
27 registration statement as provided in subsection (h) of this section. The Commissioner,
28 however, reserves the right to require individual filings if he deems such filings necessary in
29 the interest of clarity, ease of administration, or the public good.

30 (h) ~~The Commissioner~~Any authorized insurer may allow an insurer that is authorized to
31 ~~do business in this State and that is part of an insurance holding company system to register file~~
32 a registration statement on behalf of any affiliated insurer that is or insurers that are required to
33 register under subsection (a) of this section and to file all information and material required to
34 be filed under this section. (a) of this section. A registration statement may include information
35 not required by Article 19 of this Chapter regarding any insurer in the insurance holding
36 company system even if the insurer is not authorized to do business in this State. In lieu of
37 filing a registration statement on a Form B, the authorized insurer may file a copy of the
38 registration statement or similar report that it is required to file in its state of domicile, provided
39 all of the following apply:

40 (1) The statement or report contains substantially similar information required to
41 be furnished on Form B.

42 (2) The filing insurer is the principal insurance company in the insurance
43 holding company system.

44 The question of whether the filing insurer is the principal insurance company in the
45 insurance holding company system is a question of fact, and an insurer filing a registration
46 statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief
47 statement of facts which will substantiate the filing insurer's claim that it, in fact, is the
48 principal insurer in the insurance holding company system.

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

1 (j) Any person may file with the Commissioner a disclaimer of ~~affiliation~~affiliation,
2 which includes the information outlined in G.S. 58-19-25(j)(1), with any authorized insurer, or
3 such a disclaimer of affiliation may be filed by such insurer or any member of an insurance
4 holding company system as set forth in this subsection.

5 (1) ~~The disclaimer shall fully disclose all material relationships and bases for~~
6 ~~affiliation between such person and such insurer as well as the basis for~~
7 ~~disclaiming such affiliation. After a disclaimer has been filed, the insurer~~
8 ~~shall be relieved of any duty to register or report under this section that may~~
9 ~~arise out of the insurer's relationship with such person unless the~~
10 ~~Commissioner disallows such a disclaimer. The Commissioner shall~~
11 ~~disallow such a disclaimer only after furnishing all parties in interest with~~
12 ~~notice and opportunity to be heard and after making specific findings of fact~~
13 ~~to support such disallowance. A disclaimer of affiliation shall be deemed to~~
14 ~~have been granted unless the Commissioner, within 30 days following the~~
15 ~~receipt of a complete disclaimer of affiliation, notifies the filing party that~~
16 ~~the disclaimer of affiliation is disallowed. In the event of disallowance, the~~
17 ~~disclaiming party may request an administrative hearing, which shall be~~
18 ~~granted. The disclaiming party shall be relieved of its duty to register under~~
19 ~~this section if approval of the disclaimer of affiliation has been granted by~~
20 ~~the Commissioner, or if the disclaimer of affiliation is deemed to have been~~
21 ~~approved.~~

22 (2) A disclaimer of affiliation pursuant to this subsection or a request for
23 termination of registration pursuant to G.S. 58-19-25(f) claiming that a
24 person does not, or will not upon the taking of some proposed action, control
25 another person (hereinafter "subject") shall contain the following
26 information:

- 27 a. The number of authorized, issued, and outstanding voting securities
28 of the subject.
29 b. With respect to the person whose control is denied and all affiliates
30 of such person, the number and percentage of shares of the subject's
31 voting securities, which are held of record or known to be
32 beneficially owned, and the number of shares concerning which there
33 is a right to acquire, directly or indirectly.
34 c. All material relationships and bases for affiliation between the
35 subject and the person whose control is denied and all affiliates of
36 such person.
37 d. A statement explaining why the person should not be considered to
38 control the subject.

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

42 (l) Effective January 1, 2016, the ultimate controlling person of every insurer subject to
43 registration shall also file an annual enterprise risk report on Form F as prescribed by the
44 Commissioner. The report shall, to the best of the ultimate controlling person's knowledge and
45 belief, identify the material risks within the insurance holding company system that could pose
46 enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the
47 insurance holding company system as determined by the procedures within the Financial
48 Analysis Handbook adopted by the NAIC."

49 **SECTION 1.5.(a)** G.S. 58-19-30(b)(5) is recodified as G.S. 58-19-30(b)(6).

50 **SECTION 1.5.(b)** G.S. 58-19-30, as amended by subsection (a) of this section,
51 reads as rewritten:

1 "§ 58-19-30. Standards and management of an insurer within a an insurance holding
2 company system.

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

- 5 (1) The terms shall be fair and reasonable.
6 (2) Charges or fees for services performed shall be reasonable.
7 (3) Expenses incurred and payment received shall be allocated to the insurer in
8 conformity with customary insurance accounting practices consistently
9 applied.
10 (4) The books, accounts, and records of each party to all such transactions shall
11 be so maintained as to clearly and accurately disclose the nature and details
12 of the transactions, including such accounting information as is necessary to
13 support the reasonableness of the charges or fees to the respective parties.
14 (5) The insurer's surplus as regards policyholders following any dividends or
15 distributions to shareholder affiliates shall be reasonable in relation to the
16 insurer's outstanding liabilities and adequate to its financial needs.
17 (6) Agreements for cost-sharing services and management services shall include
18 such provisions as required by this Article or rule and regulation issued by
19 the Commissioner.

20 (b) The following transactions involving a domestic insurer and any person in its
21 holding company ~~system~~ system, including amendments or modifications of affiliated
22 agreements that were previously filed pursuant to this section and that are subject to any
23 materiality standards contained in subdivision (1) through (7) of this section, may not be
24 entered into unless the insurer has notified the Commissioner in writing of its intention to enter
25 into the transaction at least 30 days before the transaction, or such shorter period as the
26 Commissioner permits, and the Commissioner has not disapproved it within that period.
27 The notice for amendments or modifications shall include the reason for the change and the
28 financial impact on the domestic insurer. Informal notice shall be given to the Commissioner,
29 within 30 days after termination of a previously filed agreement, so that the Commissioner may
30 determine the type of filing required, if any. An insurer required to give notice of a proposed
31 transaction pursuant to this subsection shall furnish the required information on a Form D, as
32 prescribed by the Commissioner.

- 33 (1) Sales, purchases, exchanges, loans or extensions of credit, or investments,
34 provided the transactions equal or exceed: (i) with respect to nonlife
35 insurers, the lesser of three percent (3%) of the insurer's admitted assets or
36 twenty-five percent (25%) of surplus as regards policyholders; (ii) with
37 respect to life insurers, three percent (3%) of the insurer's admitted assets;
38 each as of the preceding December 31.
39 (2) Loans or extensions of credit to any person who is not affiliated, where the
40 insurer makes the loans or extensions of credit with the agreement or
41 understanding that the proceeds of the transactions, in whole or in substantial
42 part, are to be used to make loans or extensions of credit to, to purchase
43 assets of, or to make investments in, any affiliate of the insurer making the
44 loans or extensions of credit provided the transactions equal or exceed: (i)
45 with respect to nonlife insurers, the lesser of three percent (3%) of the
46 insurer's admitted assets or twenty-five percent (25%) of surplus as regards
47 policyholders; (ii) with respect to life insurers, three percent (3%) of the
48 insurer's admitted assets; each as of the preceding December 31.
49 (3) Reinsurance agreements or modifications to the ~~agreements~~ agreements,
50 including the following:
51 a. Reinsurance pooling agreements.

- 1 b. Agreements in which either (i) the reinsurance premium or a change
2 in the insurer's ~~liabilities~~-liabilities or (ii) the projected reinsurance
3 premium or a change in the insurer's liabilities in any of the next
4 three years equals or exceeds five percent (5%) of the insurer's
5 surplus as regards policyholders, as of the preceding ~~December 31,~~
6 including those agreementsDecember 31.
- 7 c. Agreements that may require as consideration the transfer of assets
8 from an insurer to a nonaffiliate, if an agreement or understanding
9 exists between the insurer and nonaffiliate that any portion of the
10 assets will be transferred to one or more affiliates of the insurer.
- 11 (4) All management agreements, service contracts, ~~guarantees,~~tax allocation
12 agreements, or cost-sharing arrangements. Management agreements, service
13 contracts, and cost-sharing arrangements shall at a minimum and as
14 applicable:
- 15 a. Identify the person providing services and the nature of such
16 services.
- 17 b. Set forth the methods to allocate costs.
- 18 c. Require timely settlement, not less frequently than on a quarterly
19 basis, and compliance with the requirements in the NAIC Accounting
20 Practices and Procedures Manual.
- 21 d. Prohibit advancement of funds by the insurer to the affiliate except to
22 pay for services defined in the agreement.
- 23 e. State that the insurer will maintain oversight for functions provided
24 to the insurer by the affiliate and that the insurer will monitor
25 services annually for quality assurance.
- 26 f. Define books and records of the insurer to include all books and
27 records developed or maintained under or related to the agreement.
- 28 g. Specify that all books and records of the insurer are and remain the
29 property of the insurer and are subject to the control of the insurer.
- 30 h. State that all funds and invested assets of the insurer are the exclusive
31 property of the insurer, held for the benefit of the insurer and are
32 subject to the control of the insurer.
- 33 i. Include standards for termination of the agreement with and without
34 cause.
- 35 j. Include provisions for indemnification of the insurer in the event of
36 gross negligence or willful misconduct on the part of the affiliate
37 providing the services.
- 38 k. Specify that, if the insurer is placed in receivership or seized by the
39 Commissioner under Article 30 of this Chapter:
- 40 1. All of the rights of the insurer under the agreement extend to
41 the receiver or Commissioner.
- 42 2. All books and records will immediately be made available to
43 the receiver or the Commissioner and shall be turned over to
44 the receiver or Commissioner immediately upon the receiver's
45 or the Commissioner's request.
- 46 l. Specify that the affiliate has no automatic right to terminate the
47 agreement if the insurer is placed in receivership pursuant to Article
48 30 of this Chapter.
- 49 m. Specify that the affiliate will continue to maintain any systems,
50 programs, or other infrastructure notwithstanding a seizure by the
51 Commissioner under Article 30 of this Chapter, and will make them

1 available to the receiver, for so long as the affiliate continues to
2 receive timely payment for services rendered.

3 (5) Guarantees when made by a domestic insurer; provided, however, that a
4 guarantee which is quantifiable as to amount is not subject to the notice
5 requirements of this subdivision unless it exceeds the lesser of one-half
6 percent (0.5%) of the insurer's admitted assets or ten percent (10%) of
7 surplus as regards policyholders as of the preceding December 31. Further,
8 all guarantees which are not quantifiable as to amount are subject to the
9 notice requirements of this subdivision.

10 (6) Any material transactions, specified by rule, that the Commissioner
11 determines may adversely affect the interests of the insurer's policyholders.

12 Nothing in this section authorizes or permits any transactions that, in the case of an insurer,
13 not a member of the same insurance holding company system, would be otherwise contrary to
14 law. A domestic insurer may not enter into transactions that are part of a plan or series of like
15 transactions with persons within the insurance holding company system if the purpose of those
16 separate transactions is to avoid the statutory threshold amount and thus avoid the review that
17 would otherwise occur. If the Commissioner determines that such separate transactions were
18 entered into over any 12-month period for that purpose, the Commissioner may exercise the
19 Commissioner's authority under G.S. 58-19-50. The Commissioner, in reviewing transactions
20 pursuant to this subsection, shall consider whether the transactions comply with the standards
21 set forth in subsection (a) of this section and whether they may adversely affect the interests of
22 policyholders. The Commissioner shall be notified within 30 days after any investment of a
23 domestic insurer in any one corporation if, as a result of the investment, the total investment in
24 the corporation by the insurance holding company system exceeds ten percent (10%) of the
25 corporation's voting securities.

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

30 For the purposes of this section, an "extraordinary dividend" or "extraordinary distribution"
31 includes any dividend or distribution of cash or other property, whose fair market value
32 together with that of other dividends or distributions made within the preceding 12 months
33 exceeds the greater of (i) ten percent (10%) of the insurer's surplus as regards policyholders as
34 of the preceding December 31, or (ii) the net gain from operations of the insurer, if the insurer
35 is a life insurer, or the net income, if the insurer is not a life insurer, not including realized
36 capital gains, for the 12-month period ending the preceding December 31; but does not include
37 pro rata distributions of any class of the insurer's own securities.

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

43 (d) For the purposes of this Article, in determining whether an insurer's surplus as
44 regards policyholders is reasonable in relation to the insurer's outstanding liabilities and
45 adequate to its financial needs, ~~all of the following factors, among others, shall be~~
46 ~~considered; the factors set forth in subdivisions (1) through (11) of this subsection, among~~
47 others, shall be considered. In determining the adequacy of an insurer's surplus, no single factor
48 is controlling. The Commissioner will consider the net effect of all of the factors in
49 subdivisions (1) through (11) of this subsection, plus other factors bearing on the financial
50 condition of the insurer.

- 1 (1) The size of the insurer as measured by its assets, capital and surplus,
2 reserves, premium writings, insurance in force, and other appropriate
3 criteria.
 - 4 (2) The extent to which the insurer's business is diversified among the several
5 kinds of insurance.
 - 6 (3) The number and size of risks insured in each kind of insurance.
 - 7 (4) The extent of the geographic dispersion of the insurer's insured risks.
 - 8 (5) The nature and extent of the insurer's reinsurance program.
 - 9 (6) The quality, diversification, and liquidity of the insurer's investment
10 portfolio. In determining the quality and liquidity of investments in
11 subsidiaries, the Commissioner will consider the individual subsidiary and
12 may discount or disallow its valuation to the extent that the individual
13 investments so warrant.
 - 14 (7) The recent past and projected future trend in the size of the insurer's surplus
15 as regards policyholders.
 - 16 (8) The surplus as regards policyholders maintained by other comparable
17 insurers. In comparing the surplus maintained by other insurers, the
18 Commissioner will consider the extent to which each of these factors varies
19 from company to company.
 - 20 (9) The adequacy of the insurer's reserves.
 - 21 (10) The quality and liquidity of investments in affiliates. The Commissioner
22 may treat any such investment as a disallowed asset for purposes of
23 determining the adequacy of surplus as regards policyholders whenever in
24 his judgment such investment so warrants.
 - 25 (11) The quality of the insurer's earnings and the extent to which the reported
26 earnings of the insurer include extraordinary items.
- 27 (e) Requests for approval of extraordinary dividends or any other extraordinary
28 distribution to shareholders made pursuant to subsection (c) of this section and prior notice of
29 an ordinary dividend or any other ordinary distribution to shareholders under G.S. 58-19-25(d)
30 shall include the following:
- 31 (1) The amount of the proposed dividend or distribution.
 - 32 (2) The date established for payment of the dividend or distribution.
 - 33 (3) A statement as to whether the dividend or distribution is to be in cash or
34 other property and, if in property, a description thereof, its cost, and its fair
35 market value together with an explanation of the basis for valuation.
 - 36 (4) A statement identifying the dividend or distribution as an ordinary dividend
37 or other ordinary distribution subject to G.S. 58-19-25(d) or as an
38 extraordinary dividend or other extraordinary distribution as defined in
39 subsection (c) of this section.
 - 40 (5) A copy of the calculations determining whether the proposed dividend or
41 distribution is an ordinary dividend or other ordinary distribution subject to
42 G.S. 58-19-25(d), or an extraordinary dividend or other extraordinary
43 distribution as defined in subsection (c) of this section. The work paper shall
44 include the following information:
 - 45 a. The amounts, dates, and form of payment of all dividends or
46 distributions (including regular dividends but excluding distributions
47 of the insurer's own securities) paid within the period of 12
48 consecutive months ending on the date fixed for payment of the
49 proposed dividend for which notification is being given or approval
50 is sought and commencing on the day after the same day of the same
51 month in the last preceding year.

- 1 b. Surplus as regards policyholders as of the preceding December 31.
2 c. If the insurer is a life insurer, the net gain from operations for the
3 12-month period ending the preceding December 31.
4 d. If the insurer is not a life insurer, the net income less realized capital
5 gains for the 12-month period ending the preceding December 31.

6 (6) A balance sheet and statement of income for the period between the last
7 annual statement filed with the Commissioner and the end of the month
8 preceding the month in which the request for approval or the prior
9 notification of a dividend or distribution is submitted. The insurer shall
10 indicate the amount of all unrealized capital gains included in unassigned
11 funds.

12 (7) A brief statement as to the effect of the proposed dividend or distribution
13 upon the insurer's surplus and the reasonableness of surplus in relation to the
14 insurer's outstanding liabilities and the adequacy of surplus relative to the
15 insurer's financial needs.

16 (8) A brief statement as to the intended use or uses of the proposed dividend or
17 distribution by the parent, and if applicable, any upstream parent of the
18 insurer.

19 A request for approval of an extraordinary dividend or any other extraordinary distribution
20 shall be deemed to be incomplete unless all of the information required by this subsection has
21 been included."

22 **SECTION 1.6.** G.S. 58-19-35 reads as rewritten:

23 **"§ 58-19-35. Examination.**

24 (a) Subject to the limitation contained in this section and in addition to the powers that
25 the Commissioner has under other provisions of Articles 1 through 64 of this Chapter relating
26 to the examination of insurers, the Commissioner also has the power to ~~order~~ examine any
27 insurer registered under ~~G.S. 58-19-25~~ G.S. 58-19-25, its affiliates, or any acquiring party ~~to~~
28 ~~produce such records, books, or other information in the possession of the insurer or its~~
29 ~~affiliates or the acquiring party as are reasonably necessary to ascertain the financial condition~~
30 ~~of such insurer-insurer, its affiliates, or acquiring party or to determine compliance with~~
31 ~~Articles 1 through 64 of this Chapter~~ party, including the enterprise risk to the insurer by the
32 ultimate controlling person, by any entity or combination of entities within the insurance
33 holding company system, or by the insurance holding company system on a consolidated basis.
34 ~~In the event such insurer or acquiring party fails to comply with such order, the Commissioner~~
35 ~~shall have the power to examine such insurer or its affiliates or such acquiring party to obtain~~
36 ~~such information.~~

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

43 (c) Repealed by Session Laws 1995, c. 360, s. 2(h).

44 ~~(d) The Commissioner shall exercise his power under subsection (a) of this section only~~
45 ~~if the examination of the insurer or acquiring party under other provisions of Articles 1 through~~
46 ~~64 of this Chapter is inadequate or the interests of the policyholders of such insurer may be~~
47 ~~adversely affected.~~

48 (e) The Commissioner may order any insurer registered under G.S. 58-19-25 or any
49 acquiring party to produce such records, books, or other information in the possession of the
50 insurer, its affiliates, or acquiring party as reasonably necessary to determine compliance with
51 this Chapter.

1 (f) To determine compliance with this Chapter, the Commissioner may order any
2 insurer registered under G.S. 58-19-25 to produce information not in the possession of the
3 insurer if the insurer can obtain access to such information pursuant to contractual
4 relationships, statutory obligations, or other method. In the event the insurer cannot obtain the
5 information requested by the Commissioner, the insurer shall provide the Commissioner a
6 detailed explanation of the reason that the insurer cannot obtain the information and the identity
7 of the holder of that information. Whenever it appears to the Commissioner that the detailed
8 explanation is without merit, the Commissioner may require, after notice and hearing, the
9 insurer to pay a penalty of one thousand dollars (\$1,000) for each day's delay or may suspend
10 or revoke the insurer's license.

11 (g) In the event the insurer fails to comply with an order, the Commissioner shall have
12 the power to examine the affiliates to obtain the information. The Commissioner shall also have
13 the power to issue subpoenas, to administer oaths, and to examine under oath any person for
14 purposes of determining compliance with this section. Upon the failure or refusal of any person
15 to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon
16 proper showing, the court may enter an order compelling the witness to appear and testify or
17 produce documentary evidence. Failure to obey the court order shall be punishable as contempt
18 of court. Every person shall be obligated to attend as a witness at the place specified in the
19 subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same
20 fees and mileage, if claimed, as a witness in the courts of the county specified in the subpoena
21 as the site of the examination. Any fees, mileage, and actual expense necessarily incurred in
22 securing the attendance of witnesses, and their testimony, shall be itemized and charged
23 against, and be paid by, the company being examined."

24 **SECTION 1.7.** Article 19 of Chapter 58 of the General Statutes is amended by
25 adding a new Section to read:

26 **"§ 58-19-37. Supervisory colleges.**

27 (a) With respect to any insurer registered under G.S. 58-19-25, and in accordance with
28 subsection (c) of this section, the Commissioner shall also have the power to participate in a
29 supervisory college for any domestic insurer that is part of an insurance holding company
30 system with international operations in order to determine compliance by the insurer with this
31 Chapter. The powers of the Commissioner with respect to supervisory colleges include, but are
32 not limited to, the following:

- 33 (1) Initiating the establishment of a supervisory college.
- 34 (2) Clarifying the membership and participation of other supervisors in the
35 supervisory college.
- 36 (3) Clarifying the functions of the supervisory college and the role of other
37 regulators, including the establishment of a group-wide supervisor.
- 38 (4) Coordinating the ongoing activities of the supervisory college, including
39 planning meetings, supervisory activities, and processes for information
40 sharing.
- 41 (5) Establishing a crisis management plan.

42 (b) Each registered insurer subject to this section shall be liable for and shall pay the
43 reasonable expenses of the Commissioner's participation in a supervisory college in accordance
44 with subsection (c) of this section, including reasonable travel expenses. For purposes of this
45 section, a supervisory college may be convened as either a temporary or permanent forum for
46 communication and cooperation between the regulators charged with the supervision of the
47 insurer or its affiliates, and the Commissioner may establish a regular assessment to the insurer
48 for the payment of these expenses.

49 (c) In order to assess the business strategy, financial position, legal and regulatory
50 position, risk exposure, risk management, and governance processes, and as part of the
51 examination of individual insurers in accordance with G.S. 58-19-35, the Commissioner may

1 participate in a supervisory college with other regulators charged with supervision of the
2 insurer or its affiliates, including other state, federal, and international regulatory agencies. The
3 Commissioner may enter into agreements in accordance with G.S. 58-19-40 providing the basis
4 for cooperation between the Commissioner and the other regulatory agencies and the activities
5 of the supervisory college. Nothing in this section shall delegate to the supervisory college the
6 authority of the Commissioner to regulate or supervise the insurer or its affiliates within its
7 jurisdiction."

8 **SECTION 1.8.** G.S. 58-19-40 reads as rewritten:

9 **"§ 58-19-40. Confidential treatment.**

10 (a) Documents, materials, or other information in the possession or control of the
11 Department that are ~~All information, documents, and copies thereof~~ obtained by or disclosed to
12 the Commissioner or any other person in the course of an examination or investigation made
13 pursuant to G.S. 58-19-35, and all information reported pursuant to subdivisions (12) and (13)
14 of G.S. 58-19-15(g), ~~G.S. 58-19-25~~G.S. 58-19-25, and G.S. 58-19-30, shall be given
15 confidential treatment; ~~shall not be subject to subpoena; and shall not be made by law and~~
16 privileged, shall not be considered a public record under either G.S. 58-2-100 or Chapter 132 of
17 the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery or
18 admissible in evidence in any private civil action. However, the Commissioner is authorized to
19 use the documents, materials, or other information in the furtherance of any regulatory or legal
20 action brought as a part of the Commissioner's official duties. The Commissioner shall not
21 otherwise make the documents, materials, or other information public by the Commissioner,
22 the NAIC, or any other person, except to insurance regulators of other states, without the prior
23 written consent of the insurer or acquiring party to which it pertains unless the Commissioner,
24 after giving the insurer and its affiliates or the acquiring party that who would be affected
25 thereby notice and opportunity to be heard, determines that the interest of the insurer's
26 policyholders, policyholders, shareholders, or the public will be served by the publication
27 thereof, in which event he the Commissioner may publish all or any part thereof of the
28 information in such manner as he considers may be deemed appropriate.

29 (b) Neither the Commissioner nor any person who received documents, materials, or
30 other information while acting under the authority of the Commissioner or with whom such
31 documents, materials, or other information are shared pursuant to this Article shall be permitted
32 or required to testify in any private civil action concerning any confidential documents,
33 materials, or information subject to subsection (a) of this section.

34 (c) In order to assist in the performance of the duties imposed by this Article, the
35 Commissioner:

36 (1) May share documents, materials, or other information, including the
37 confidential and privileged documents, materials, or information subject to
38 subsection (a) of this section, with other state, federal, and international
39 regulatory agencies, with the NAIC and its affiliates and subsidiaries, and
40 with state, federal, and international law enforcement authorities, including
41 members of any supervisory college described in G.S. 58-19-37, provided
42 that the recipient agrees in writing to maintain the confidentiality and
43 privileged status of the document, material, or other information and has
44 verified in writing the legal authority to maintain confidentiality.

45 (2) Notwithstanding subdivision (1) of this subsection, may only share
46 confidential and privileged documents, material, or information reported
47 pursuant to G.S. 58-19-25 with Commissioners of states having statutes or
48 regulations substantially similar to subsection (a) of this section and who
49 have agreed in writing not to disclose such information.

50 (3) May receive documents, materials, or information, including otherwise
51 confidential and privileged documents, materials, or information from the

1 NAIC and its affiliates and subsidiaries and from regulatory and law
2 enforcement officials of other foreign or domestic jurisdictions, and shall
3 maintain as confidential or privileged any document, material, or
4 information received with notice or the understanding that it is confidential
5 or privileged under the laws of the jurisdiction that is the source of the
6 document, material, or information.

7 (4) Shall enter into written agreements with the NAIC governing sharing and
8 use of information provided pursuant to this Article consistent with this
9 subsection that shall:

10 a. Specify procedures and protocols regarding the confidentiality and
11 security of information shared with the NAIC and its affiliates and
12 subsidiaries pursuant to this Article, including procedures and
13 protocols for sharing by the NAIC with other state, federal, or
14 international regulators;

15 b. Specify that ownership of information shared with the NAIC and its
16 affiliates and subsidiaries pursuant to this Article remains with the
17 Commissioner, and the NAIC's use of the information is subject to
18 the direction of the Commissioner;

19 c. Require prompt notice to be given to an insurer whose confidential
20 information in the possession of the NAIC pursuant to this Article is
21 subject to a request or subpoena to the NAIC for disclosure or
22 production; and

23 d. Require the NAIC and its affiliates and subsidiaries to consent to
24 intervention by an insurer in any judicial or administrative action in
25 which the NAIC and its affiliates and subsidiaries may be required to
26 disclose confidential information about the insurer shared with the
27 NAIC and its affiliates and subsidiaries pursuant to Article 19 of this
28 Chapter.

29 (d) The sharing of information by the Commissioner pursuant to this Article shall not
30 constitute a delegation of regulatory authority or rule making, and the Commissioner is solely
31 responsible for the administration, execution, and enforcement of the provisions of Article 19
32 of this Chapter.

33 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
34 materials, or information shall occur as a result of disclosure to the Commissioner under this
35 section or as a result of sharing as authorized in subsection (c) of this section.

36 (f) Documents, materials, or other information in the possession or control of the NAIC
37 pursuant to a requirement of this Article shall be confidential by law and privileged, shall not
38 be considered a public record under G.S. 58-2-100 or Chapter 132 of the General Statutes, shall
39 not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in
40 any private civil action."

41 **SECTION 1.9.** G.S. 58-19-50 is amended by adding a new subsection to read:

42 "(f) Whenever it appears to the Commissioner that any person has committed a violation
43 of G.S. 58-19-15, and which prevents the full understanding of the enterprise risk to the insurer
44 by the affiliates or by the insurance holding company system, the violation may serve as an
45 independent basis for disapproving dividends or distributions and for placing the insurer under
46 an order of supervision in accordance with Article 30 of this Chapter."

47 **SECTION 1.10.** G.S. 58-19-60 reads as rewritten:

48 "**§ 58-19-60. Recovery.**

49 (a) If an order for liquidation or rehabilitation of a domestic insurer has been entered,
50 the receiver appointed under such order has a right to recover on behalf of the insurer, (i) from
51 any parent corporation or insurance holding company or person or affiliate who otherwise

1 controlled the insurer, the amount of distributions (other than distributions of shares of the
2 same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a
3 bonus, termination settlement, or extraordinary lump sum salary adjustment made by the
4 insurer or its subsidiary or subsidiaries to a director, officer, or employee, where the
5 distribution or payment pursuant to (i) or (ii) above is made at any time during the one year
6 preceding the petition for liquidation or rehabilitation, as the case may be, subject to the
7 limitations of subsections (b), (c), and (d) of this section.

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

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

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

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

28 **SECTION 1.11.** Article 19 of Chapter 58 of the General Statutes is amended by
29 adding four new sections to read:

30 **"§ 58-19-75. Forms – general requirements.**

31 (a) Forms A, B, C, D, E, and F are intended to be guides in the preparation of the
32 statements required by G.S. 58-19-15, 58-19-25, and 58-19-30. They are not intended to be
33 fill-in-the-blank forms. The statements filed shall contain the numbers and captions of all items,
34 but the text of the items may be omitted, provided the answers are prepared in such a manner as
35 to indicate clearly the scope and coverage of the items. All instructions, whether appearing
36 under the items of the form or elsewhere, are to be omitted. Unless expressly provided
37 otherwise, if any item is inapplicable or the answer to the item is in the negative, an appropriate
38 statement to that effect shall be made.

39 (b) A complete copy of each statement, including exhibits and all other papers and
40 documents filed as a part of the statement, shall be filed with the Commissioner by personal
41 delivery or mail addressed to the Commissioner and shall be signed in the manner prescribed
42 on the form. Unsigned copies shall be conformed. If the signature of any person is affixed
43 pursuant to a power of attorney or other similar authority, a copy of the power of attorney or
44 other authority shall also be filed with the statement.

45 (c) If an applicant requests a hearing on a consolidated basis under G.S. 58-19-15, in
46 addition to filing the Form A with the Commissioner, the applicant shall file a copy of the Form
47 A with the NAIC in electronic form.

48 (d) Statements should be prepared electronically. Statements shall be easily readable
49 and suitable for review and reproduction. Debits in credit categories and credits in debit
50 categories shall be designated so as to be clearly distinguishable as such on photocopies.
51 Statements shall be in the English language and monetary values shall be stated in United

1 States dollars. If any exhibit or other paper or document filed with the statement is in a foreign
2 language, it shall be accompanied by a translation into the English language and any monetary
3 value shown in a foreign currency normally shall be converted into United States dollars.

4 **"§ 58-19-80. Forms – incorporation by reference, summaries and omissions.**

5 (a) Information required by any item of Form A, Form B, Form D, Form E, or Form F
6 may be incorporated by reference in answer or partial answer to any other item. Information
7 contained in any financial statement, annual report, proxy statement, statement filed with a
8 governmental authority, or any other document may be incorporated by reference in answer or
9 partial answer to any item of Form A, Form B, Form D, Form E, or Form F provided the
10 document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits
11 if the documents are extensive. Documents currently on file with the Commissioner which were
12 filed within three years need not be attached as exhibits. References to information contained in
13 exhibits or in documents already on file shall clearly identify the material and shall specifically
14 indicate that such material is to be incorporated by reference in answer to the item. Such
15 materials shall not be incorporated by reference in any case where the incorporation would
16 render the statement incomplete, unclear, or confusing.

17 (b) Where an item requires a summary or outline of the provisions of any document,
18 only a brief statement shall be made as to the pertinent provisions of the document. In addition
19 to the statement, the summary or outline must incorporate by reference particular parts of any
20 exhibit or document currently on file with the Commissioner which was filed within three years
21 and may be qualified in its entirety by such reference. In any case where two or more
22 documents required to be filed as exhibits are substantially identical in all material respects
23 except as to the parties thereto, the dates of execution, or other details, a copy of only one of the
24 documents need be filed with a schedule identifying the omitted documents and setting forth
25 the material details in which those documents differ from the documents, a copy of which is
26 filed.

27 **"§ 58-19-85. Forms – information unknown or unavailable and extension of time to**
28 **furnish.**

29 If it is impractical to furnish any required information, document, or report at the time it is
30 required to be filed, there shall be filed with the Commissioner a separate document:

- 31 (1) Identifying the information, document, or report in question.
- 32 (2) Stating why the filing thereof at the time required is impractical.
- 33 (3) Requesting an extension of time for filing the information, document, or
34 report to a specified date. The request for extension shall be deemed granted
35 unless the Commissioner after receipt of the request denies the request prior
36 to the time the information, document, or report is required.

37 **"§ 58-19-90. Forms – additional information and exhibits.**

38 In addition to the information expressly required to be included in Form A, Form B, Form
39 C, Form D, Form E, and Form F, the Commissioner may request such further material
40 information, if any, as may be necessary to make the information contained therein not
41 misleading. The person filing may also file such exhibits as it may desire in addition to those
42 expressly required by the statement. The exhibits shall be so marked as to indicate clearly the
43 subject matters to which they refer. Changes to Form A, B, C, D, or F shall include on the top
44 of the cover page the phrase: "Change No. [insert number] to" and shall indicate the date of the
45 change and not the date of the original filing."

46 **SECTION 1.12.** G.S. 58-10-12(e) reads as rewritten:

47 (e) Except as specifically provided in a plan of conversion, for five years following the
48 effective date of the conversion, no person or persons acting in concert (other than the former
49 mutual, any parent company, or any employee benefit plans or trusts sponsored by the former
50 mutual or a parent company) shall directly or indirectly acquire, or agree or offer to acquire, in
51 any manner the beneficial ownership of five percent (5%) or more of the outstanding shares of

1 any class of a voting security of the former mutual or any parent company without the prior
 2 approval of the Commissioner of a statement filed by that person with the Commissioner. The
 3 statement shall contain the information required by ~~G.S. 58-19-15(b)~~G.S. 58-19-15(g) and any
 4 other information required by the Commissioner. The Commissioner shall not approve an
 5 acquisition under this subsection unless the Commissioner finds that:

- 6 (1) ~~The requirements of G.S. 58-19-15(e) will be satisfied.~~None of the
 7 conditions set forth in G.S. 58-19-15(i) will exist.
 8 (2) The acquisition will not ~~frustrate~~impede the plan of conversion or the
 9 amendment to the articles of incorporation as approved by the members and
 10 the Commissioner.
 11 (3) The boards of directors of the former mutual and any parent company have
 12 approved the acquisition.
 13 (4) The acquisition would be in the best interest of the present and future
 14 policyholders of the former mutual without regard to any interest of
 15 policyholders as shareholders of the former mutual or any parent company."
 16

17 PART II. REVISIONS TO RISK-BASED CAPITAL REQUIREMENTS FOR LIFE 18 INSURERS

19 SECTION 2. G.S. 58-12-11(a) reads as rewritten:

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

- 21 (1) The filing of a risk-based capital report by an insurer that indicates ~~that~~any
 22 of the following:
 23 a. The insurer's total adjusted capital is greater than or equal to its
 24 regulatory action level risk-based capital but less than its company
 25 action level risk-based ~~capital; or~~capital.
 26 b. In the case of a life or health insurer, the insurer has total adjusted
 27 capital that (i) is greater than or equal to its company action level
 28 risk-based capital but less than ~~the product of three times~~ its
 29 authorized control level risk-based ~~capital and 2.5~~capital and (ii) has
 30 a negative ~~trend; or~~trend.
 31 c. In the case of a property or casualty insurer or a health organization,
 32 the insurer has total adjusted capital that is greater than or equal to its
 33 company action level risk-based capital but less than the product of
 34 its authorized control level risk-based capital and 3.0 and triggers the
 35 trend test determined in accordance with the trend test calculation
 36 included in the property and casualty or health organization
 37 risk-based capital instructions.

38"
 39

40 PART III. UPDATE CORPORATE GOVERNANCE REQUIREMENTS FOR RISK 41 RETENTION GROUPS

42 SECTION 3. G.S. 58-22-15 reads as rewritten:

43 "§ 58-22-15. Risk retention groups chartered in this State.

44 (a) General Requirements. – A risk retention group shall, pursuant to the provisions of
 45 Part 9 of Article 10 of this Chapter, be chartered and licensed to write only liability insurance
 46 pursuant to this Article and, except as provided elsewhere in this Article, must comply with all
 47 of the laws and rules applicable to such insurers chartered and licensed in this State and with
 48 G.S. 58-22-20 to the extent such requirements are not a limitation on laws, administrative rules,
 49 or requirements of this State.

50 (b) Plan of Operation. – Before it may offer insurance in any state, each risk retention
 51 group shall also submit for approval to the Commissioner of this State a plan of operation or

1 feasibility study. The Commissioner may limit the net amount of risk retained by a risk
2 retention group for any individual risk. The risk retention group shall submit an appropriate
3 revision in the event of any subsequent material change in any item of the plan of operation or
4 feasibility study, within 10 days after any such change. The group shall not offer any additional
5 kinds of liability insurance, in this State or in any other state, until a revision of such plan or
6 study is approved by the Commissioner.

7 (c) Required Information. – At the time of filing its application for a charter, the risk
8 retention group shall provide to the Commissioner in summary form the following information:
9 the identity of the initial members of the group, the identity of those individuals who organized
10 the group or who will provide administrative services or otherwise influence or control the
11 activities of the group, the amount and nature of initial capitalization, the coverages to be
12 afforded, and the states in which the group intends to operate. Upon receipt of this information,
13 the Commissioner shall forward such information to the NAIC. Providing notification to the
14 NAIC is in addition to and shall not be sufficient to satisfy the requirements of G.S. 58-22-20
15 or any other sections of this Article.

16 (d) Governance Standards. – Risk retention groups shall comply with the following
17 governance standards:

18 (1) Board of directors. – The following standards apply to the board of directors
19 of the risk retention group:

20 a. Definitions. – The following definitions apply in this subdivision:

21 1. Board of directors or board. – The governing body of the risk
22 retention group elected by the shareholders or members to
23 establish policy, elect or appoint officers and committees, and
24 make other governing decisions.

25 2. Director. – A natural person designated in the articles of the
26 risk retention group, or designated, elected, or appointed by
27 any other manner, name, or title to act as a director.

28 b. Independent directors. – The board of directors of the risk retention
29 group shall have a majority of independent directors. If the risk
30 retention group is a reciprocal, then the attorney-in-fact would be
31 required to adhere to the same standards regarding independence of
32 operation and governance as imposed on the risk retention group's
33 board of directors or subscribers advisory committee under these
34 standards; and, to the extent permissible under State law, service
35 providers of a reciprocal risk retention group should contract with the
36 risk retention group and not the attorney-in-fact.

37 c. Determination of independence. – No director qualifies as
38 independent unless the board of directors affirmatively determines
39 that the director has no material relationship, as partially specified in
40 sub-subdivision d. of this subdivision, with the risk retention group.
41 Each risk retention group shall disclose these determinations to the
42 Commissioner at least annually. For the purpose of this subdivision,
43 any person that is a direct or indirect owner of or subscriber in the
44 risk retention group (or is an officer, director, or employee of such an
45 owner and insured, unless some other position of such officer,
46 director, or employee constitutes a material relationship), as
47 contemplated by Section 3901(a)(4)(E)(ii) of the federal Liability
48 Risk Retention Act, is considered to be "independent."

49 d. Material relationship. – "Material relationship" of a person with the
50 risk retention group includes, but is not limited to, the following:

- 1 1. The receipt in any one 12-month period of compensation or
2 payment of any other item of value by such person, a member
3 of such person's immediate family, or any business with
4 which such person is affiliated from the risk retention group
5 or a consultant or service provider to the risk retention group
6 is greater than or equal to five percent (5%) of the risk
7 retention group's gross written premium for such 12-month
8 period or two percent (2%) of its surplus, whichever is
9 greater, as measured at the end of any fiscal quarter falling in
10 such a 12-month period. Such person or immediate family
11 member of such person is not independent until one year after
12 his/her compensation from the risk retention group falls
13 below the threshold.
 - 14 2. A relationship with an auditor as follows: a director or an
15 immediate family member of a director who is affiliated with
16 or employed in a professional capacity by a present or former
17 internal or external auditor of the risk retention group is not
18 independent until one year after the end of the affiliation,
19 employment, or auditing relationship.
 - 20 3. A relationship with a related entity as follows: a director or
21 immediate family member of a director who is employed as
22 an executive officer of another company where any of the risk
23 retention group's present executives serve on that other
24 company's board of directors is not independent until one
25 year after the end of such service or the employment
26 relationship.
- 27 (2) Service provider contracts. – The term of any material service provider
28 contract with the risk retention group shall not exceed five years. Any such
29 contract, or its renewal, shall require the approval of the majority of the risk
30 retention group's independent directors. The risk retention group's board of
31 directors shall have the right to terminate any service provider, audit, or
32 actuarial contracts at any time for cause after providing adequate notice as
33 defined in the contract. The service provider contract is deemed material if
34 the amount to be paid for such contract is more than or equal to the greater
35 of five percent (5%) of the risk retention group's annual gross written
36 premium or two percent (2%) of its surplus.
- 37 a. For purposes of this standard, "service providers" shall include
38 captive managers, auditors, accountants, actuaries, investment
39 advisors, lawyers, managing general underwriters, or other party
40 responsible for underwriting, determination of rates, collection of
41 premium, adjusting and settling claims, or the preparation of
42 financial statements. Any reference to "lawyers" in the prior sentence
43 of this sub-subdivision does not include defense counsel retained by
44 the risk retention group to defend claims, unless the amount of fees
45 paid to such lawyers are "material" under the standard set forth in
46 this subdivision for a service provider contract.
 - 47 b. No service provider contract shall be entered into with a person
48 meeting the definition of "material relationship" contained in
49 sub-subdivision (1)d. of this subsection unless the risk retention
50 group has notified the Commissioner in writing of its intention to

- 1 enter into such transaction at least 30 days prior thereto and the
2 Commissioner has not disapproved it within such period.
- 3 (3) Written policy. – The risk retention group's board of directors shall adopt a
4 written policy in the plan of operation as approved by the board that requires
5 the board to do all of the following:
- 6 a. Assure that all owner/insureds of the risk retention group receive
7 evidence of ownership interest.
- 8 b. Develop a set of governance standards applicable to the risk retention
9 group.
- 10 c. Oversee the evaluation of the risk retention group's management
11 including, but not limited to, the performance of the captive manager,
12 managing general underwriter, or other party or parties responsible
13 for underwriting, determination of rates, collection of premium,
14 adjusting or settling claims, or the preparation of financial
15 statements.
- 16 d. Review and approve the amount to be paid for all material service
17 providers.
- 18 e. Review and approve, at least annually, all of the following:
- 19 1. Risk retention group's goals and objectives relevant to the
20 compensation of officers and service providers.
- 21 2. The officers' and service providers' performance in light of
22 those goals and objectives.
- 23 3. The continued engagement of the officers and material
24 service providers.
- 25 (4) Governance standards. – The board of directors shall adopt and disclose
26 governance standards. For purposes of this subdivision, "disclose" means
27 making such information available through electronic or other means, such
28 as posting on the risk retention group's Web site, and providing such
29 information to members or insureds upon request. The standards to be
30 disclosed shall include all of the following:
- 31 a. A process by which the directors are elected by the owner/insureds.
- 32 b. Director qualification standards.
- 33 c. Director responsibilities.
- 34 d. Director access to management and, as necessary and appropriate,
35 independent advisors.
- 36 e. Director compensation.
- 37 f. Director orientation and continuing education.
- 38 g. The policies and procedures that are followed for management
39 succession.
- 40 h. The policies and procedures that are followed for annual
41 performance evaluation of the board.
- 42 (5) Business conduct and ethics. – The board of directors shall adopt and
43 disclose a code of business conduct and ethics for directors, officers, and
44 employees and promptly disclose to the board of directors any waivers of the
45 code for directors or executive officers. The code of business conduct and
46 ethics shall include the following topics:
- 47 a. Conflicts of interest.
- 48 b. Matters covered under the corporate opportunities doctrine as that
49 doctrine has been interpreted by the courts of this State.
- 50 c. Confidentiality.
- 51 d. Fair dealing.

- 1 e. Protection and proper use of risk retention group assets.
- 2 f. Duty of compliance with all applicable laws, rules, and regulations.
- 3 g. A requirement to report any illegal or unethical behavior which
- 4 affects the operation of the risk retention group.
- 5 (6) Reporting noncompliance. – The captive manager or the president or chief
- 6 executive officer of the risk retention group shall promptly notify the
- 7 Commissioner in writing if either becomes aware of any material
- 8 noncompliance with the governance standards set forth in this subsection."
- 9

10 **PART IV. EFFECTIVE DATE**

11 **SECTION 4.** Section 2 of this act becomes effective January 1, 2017. The

12 remainder of this act becomes effective July 1, 2015.