

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

HOUSE BILL 288  
RATIFIED BILL

AN ACT TO MAINTAIN NAIC ACCREDITATION OF THE DEPARTMENT OF INSURANCE BY MAKING REVISIONS TO THE LAWS GOVERNING INSURANCE COMPANY HOLDING SYSTEMS, RISK-BASED CAPITAL REQUIREMENTS FOR LIFE INSURERS, AND CORPORATE GOVERNANCE REQUIREMENTS FOR RISK RETENTION GROUPS; AND TO MAKE CONFORMING AND CLARIFYING CHANGES TO THE LAWS GOVERNING MOTOR VEHICLE FINANCIAL RESPONSIBILITY AND AUTO AND HOMEOWNERS' INSURANCE OPTIONAL PROGRAM ENHANCEMENTS, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

**PART I. INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT REVISIONS**

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

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

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

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

...."

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

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

**"§ 58-19-5. Definitions.**

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

- (1) An "affiliate" of or person "affiliated" with a specific ~~person is a person.~~ – A person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.
- (2) "Control", including the terms "controlling", "controlled by", and "~~under common control with~~", means the "under common control with." – The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or



holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by G.S. 58-19-25(j) that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

- (3) Enterprise risk. – Any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in Article 12 of this Chapter or would cause the insurer to be in a hazardous financial condition as set forth in G.S. 58-30-60.
- (4) Executive officer. – A chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
- (5) Form A. – The statement regarding the acquisition of control of or merger with a domestic insurer that is required to be filed with the Commissioner pursuant to G.S. 58-19-15.
- (6) Form B. – The insurance holding company system annual registration statement that is required to be filed with the Commissioner pursuant to G.S. 58-19-25.
- (7) Form C. – The summary of changes to the insurance company system annual registration statement that is required to be filed with the Commissioner pursuant to G.S. 58-19-25.
- (8) Form D. – The prior notice of a transaction that is required to be filed with the Commissioner pursuant to G.S. 58-19-30(b).
- (9) Form E. – The pre-acquisition notification that is required to be filed with the Commissioner pursuant to G.S. 58-19-15(f).
- (10) Form F. – The annual enterprise risk report required to be filed with the Commissioner pursuant to G.S. 58-19-25(l).
- (11) ~~"Insurance holding company system"~~ means an Insurance holding company system. – An entity comprising two or more affiliated persons, one or more of which is an insurer.
- (12) ~~"Insurer"~~ includes Insurer. – As defined in G.S. 58-1-5(3), and includes a person subject to Articles 65 and 66 or 67 of this Chapter. "Insurer" does not include (1) an agency, authority, or instrumentality of the United States; any of its possessions and territories; the Commonwealth of Puerto Rico; the District of Columbia; nor a state or political subdivision of a state; nor (2) fraternal benefit societies or fraternal orders.
- (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. 58-19-15 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 (b)(12) of G.S. 58-19-15 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.

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

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

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

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

...

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

If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate, or other group, the Commissioner shall require that the information called for by subdivisions (1) through ~~(12)~~(14) of this subsection be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the Commissioner shall require that the information called for by subdivisions (1) through ~~(12)~~(14) of this subsection be given with respect to such corporation, each officer and director of such corporation, and each person who is, directly or indirectly, the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

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

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

If the proposed acquisition of control will require the approval of the insurance commissioners of more than one state, the public hearing referred to in this subsection may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a) of this section. Such person shall file the statement referred to in subsection (a) of this section with the NAIC within five days of making the request for a public hearing. A

commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt out within 10 days of the receipt of the statement referred to in subsection (a) of this section. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.

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

(o) The courts of this State are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the Commissioner under this section; and the overall actions involving such person arising out of violations of this section and each such person is deemed to have performed acts equivalent to and constituting an appointment by such person of the Commissioner to be his true and lawful attorney upon whom may be served all legal process in any action, suit, or proceeding arising out of violations of this section. Copies of all such process shall be handled in accordance with the provisions of G.S. 58-16-30, 58-16-35, and 58-16-45."

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

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

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

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

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

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

- ...
- (6) If requested by the Commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request

by providing the Commissioner with the most recently filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission.

(7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

(8) Any other information required by the Commissioner by rule or regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) The terms shall be fair and reasonable.
- (2) Charges or fees for services performed shall be reasonable.

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

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

- (1) Sales, purchases, exchanges, loans or extensions of credit, or investments, provided the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the preceding December 31.
- (2) Loans or extensions of credit to any person who is not affiliated, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the preceding December 31.
- (3) Reinsurance agreements or modifications to the agreements—agreements, including the following:
  - a. Reinsurance pooling agreements.
  - b. Agreements in which either (i) the reinsurance premium or a change in the insurer's liabilities—liabilities or (ii) the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the preceding December 31, including those agreementsDecember 31.
  - c. Agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer.
- (4) All management agreements, service contracts, guarantees, tax allocation agreements, or cost-sharing arrangements. Management agreements, service contracts, and cost-sharing arrangements shall at a minimum and as applicable:



- a. Identify the person providing services and the nature of such services.
  - b. Set forth the methods to allocate costs.
  - c. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the NAIC Accounting Practices and Procedures Manual.
  - d. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement.
  - e. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance.
  - f. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement.
  - g. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to the control of the insurer.
  - h. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer.
  - i. Include standards for termination of the agreement with and without cause.
  - j. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services.
  - k. Specify that, if the insurer is placed in receivership or seized by the Commissioner under Article 30 of this Chapter:
    - 1. All of the rights of the insurer under the agreement extend to the receiver or Commissioner.
    - 2. All books and records will immediately be made available to the receiver or the Commissioner and shall be turned over to the receiver or Commissioner immediately upon the receiver's or the Commissioner's request.
  - l. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Article 30 of this Chapter.
  - m. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Commissioner under Article 30 of this Chapter, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.
- (5) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this subdivision unless it exceeds the lesser of one-half percent (0.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the preceding December 31. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this subdivision.
- (6) Any material transactions, specified by rule, that the Commissioner determines may adversely affect the interests of the insurer's policyholders.

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

domestic insurer in any one corporation if, as a result of the investment, the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

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

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

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

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

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
- (2) The extent to which the insurer's business is diversified among the several kinds of insurance.
- (3) The number and size of risks insured in each kind of insurance.
- (4) The extent of the geographic dispersion of the insurer's insured risks.
- (5) The nature and extent of the insurer's reinsurance program.
- (6) The quality, diversification, and liquidity of the insurer's investment portfolio. In determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.
- (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. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company.
- (9) The adequacy of the insurer's reserves.
- (10) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.
- (11) The quality of the insurer's earnings and the extent to which the reported earnings of the insurer include extraordinary items.

(e) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders made pursuant to subsection (c) of this section and prior notice of an ordinary dividend or any other ordinary distribution to shareholders under G.S. 58-19-25(d) shall include the following:

- (1) The amount of the proposed dividend or distribution.

- (2) The date established for payment of the dividend or distribution.
- (3) A statement as to whether the dividend or distribution is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation.
- (4) A statement identifying the dividend or distribution as an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d) or as an extraordinary dividend or other extraordinary distribution as defined in subsection (c) of this section.
- (5) A copy of the calculations determining whether the proposed dividend or distribution is an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d), or an extraordinary dividend or other extraordinary distribution as defined in subsection (c) of this section. The work paper shall include the following information:
  - a. The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which notification is being given or approval is sought and commencing on the day after the same day of the same month in the last preceding year.
  - b. Surplus as regards policyholders as of the preceding December 31.
  - c. If the insurer is a life insurer, the net gain from operations for the 12-month period ending the preceding December 31.
  - d. If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the preceding December 31.
- (6) A balance sheet and statement of income for the period between the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for approval or the prior notification of a dividend or distribution is submitted. The insurer shall indicate the amount of all unrealized capital gains included in unassigned funds.
- (7) A brief statement as to the effect of the proposed dividend or distribution upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
- (8) A brief statement as to the intended use or uses of the proposed dividend or distribution by the parent, and if applicable, any upstream parent of the insurer.

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

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

**"§ 58-19-35. Examination.**

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

(b) The Commissioner may retain, at the expense of the registered insurer or acquiring party that is being examined, such attorneys, actuaries, economists, accountants, and other experts not otherwise a part of the Commissioner's staff as are reasonably necessary to assist in

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

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

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

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

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

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

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

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

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

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

(b) Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the Commissioner's participation in a supervisory college in accordance with subsection (c) of this section, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the

insurer or its affiliates, and the Commissioner may establish a regular assessment to the insurer for the payment of these expenses.

(c) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with G.S. 58-19-35, the Commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The Commissioner may enter into agreements in accordance with G.S. 58-19-40 providing the basis for cooperation between the Commissioner and the other regulatory agencies and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the Commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction."

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

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

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

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

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

- (1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in G.S. 58-19-37, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality.
- (2) Notwithstanding subdivision (1) of this subsection, may only share confidential and privileged documents, material, or information reported pursuant to G.S. 58-19-25 with Commissioners of states having statutes or regulations substantially similar to subsection (a) of this section and who have agreed in writing not to disclose such information.
- (3) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or

information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

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

- a. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Article, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;
- b. Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Article remains with the Commissioner, and the NAIC's use of the information is subject to the direction of the Commissioner;
- c. Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this Article is subject to a request or subpoena to the NAIC for disclosure or production; and
- d. Require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to Article 19 of this Chapter.

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

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

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

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

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

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

"§ 58-19-60. **Recovery.**

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under such order has a right to recover on behalf of the insurer, (i) from any parent corporation or insurance holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary or subsidiaries to a director, officer, or employee, where the distribution or payment pursuant to (i) or (ii) above is made at any time during the one year preceding the petition for liquidation or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d) of this section.

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

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

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

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

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

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

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

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

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

(d) Statements should be prepared electronically. Statements shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States dollars. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States dollars.

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

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

(b) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline must incorporate by reference particular parts of any

exhibit or document currently on file with the Commissioner which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which those documents differ from the documents, a copy of which is filed.

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

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

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

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

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

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

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

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

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

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

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

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



risk-based capital but less than ~~the product of three times~~ its authorized control level risk-based capital and 2.5 capital and (ii) has a negative ~~trend; or trend.~~

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

...."

### **PART III. UPDATE CORPORATE GOVERNANCE REQUIREMENTS FOR RISK RETENTION GROUPS**

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

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

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

(b) Plan of Operation. – Before it may offer insurance in any state, each risk retention group shall also submit for approval to the Commissioner of this State a plan of operation or feasibility study. The Commissioner may limit the net amount of risk retained by a risk retention group for any individual risk. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within 10 days after any such change. The group shall not offer any additional kinds of liability insurance, in this State or in any other state, until a revision of such plan or study is approved by the Commissioner.

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

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

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

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

1. Board of directors or board. – The governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions.
2. Director. – A natural person designated in the articles of the risk retention group, or designated, elected, or appointed by any other manner, name, or title to act as a director.

b. Independent directors. – The board of directors of the risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal, then the attorney-in-fact would be required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors or subscribers advisory committee under these standards; and, to the extent permissible under State law, service

providers of a reciprocal risk retention group should contract with the risk retention group and not the attorney-in-fact.

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

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

1. The receipt in any one 12-month period of compensation or payment of any other item of value by such person, a member of such person's immediate family, or any business with which such person is affiliated from the risk retention group or a consultant or service provider to the risk retention group is greater than or equal to five percent (5%) of the risk retention group's gross written premium for such 12-month period or two percent (2%) of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in such a 12-month period. Such person or immediate family member of such person is not independent until one year after his/her compensation from the risk retention group falls below the threshold.

2. A relationship with an auditor as follows: a director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group is not independent until one year after the end of the affiliation, employment, or auditing relationship.

3. A relationship with a related entity as follows: a director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one year after the end of such service or the employment relationship.

(2) Service provider contracts. – The term of any material service provider contract with the risk retention group shall not exceed five years. Any such contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The risk retention group's board of directors shall have the right to terminate any service provider, audit, or actuarial contracts at any time for cause after providing adequate notice as defined in the contract. The service provider contract is deemed material if the amount to be paid for such contract is more than or equal to the greater of five percent (5%) of the risk retention group's annual gross written premium or two percent (2%) of its surplus.

a. For purposes of this standard, "service providers" shall include captive managers, auditors, accountants, actuaries, investment advisors, lawyers, managing general underwriters, or other party responsible for underwriting, determination of rates, collection of premium, adjusting and settling claims, or the preparation of financial statements. Any reference to "lawyers" in the prior sentence of this sub-subdivision does not include defense counsel retained by

- the risk retention group to defend claims, unless the amount of fees paid to such lawyers are "material" under the standard set forth in this subdivision for a service provider contract.
- b. No service provider contract shall be entered into with a person meeting the definition of "material relationship" contained in sub-subdivision (1)d. of this subsection unless the risk retention group has notified the Commissioner in writing of its intention to enter into such transaction at least 30 days prior thereto and the Commissioner has not disapproved it within such period.
- (3) Written policy. – The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to do all of the following:
- a. Assure that all owner/insureds of the risk retention group receive evidence of ownership interest.
- b. Develop a set of governance standards applicable to the risk retention group.
- c. Oversee the evaluation of the risk retention group's management including, but not limited to, the performance of the captive manager, managing general underwriter, or other party or parties responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements.
- d. Review and approve the amount to be paid for all material service providers.
- e. Review and approve, at least annually, all of the following:
1. Risk retention group's goals and objectives relevant to the compensation of officers and service providers.
  2. The officers' and service providers' performance in light of those goals and objectives.
  3. The continued engagement of the officers and material service providers.
- (4) Governance standards. – The board of directors shall adopt and disclose governance standards. For purposes of this subdivision, "disclose" means making such information available through electronic or other means, such as posting on the risk retention group's Web site, and providing such information to members or insureds upon request. The standards to be disclosed shall include all of the following:
- a. A process by which the directors are elected by the owner/insureds.
- b. Director qualification standards.
- c. Director responsibilities.
- d. Director access to management and, as necessary and appropriate, independent advisors.
- e. Director compensation.
- f. Director orientation and continuing education.
- g. The policies and procedures that are followed for management succession.
- h. The policies and procedures that are followed for annual performance evaluation of the board.
- (5) Business conduct and ethics. – The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers. The code of business conduct and ethics shall include the following topics:
- a. Conflicts of interest.
- b. Matters covered under the corporate opportunities doctrine as that doctrine has been interpreted by the courts of this State.
- c. Confidentiality.
- d. Fair dealing.
- e. Protection and proper use of risk retention group assets.

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

#### **PART IV. CONFORMING AND CLARIFYING CHANGES**

**SECTION 4.** G.S. 20-309 is amended by adding a new subsection to read:

"(c1) The proof of insurance required to demonstrate financial responsibility under subsection (c) of this section may be satisfied by producing records of insurance in either physical or electronic format. Acceptable electronic formats include display of electronic images on a mobile phone or other portable electronic device produced through an application or Web site of the insurer."

**SECTION 5.** Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-36-43. Optional program enhancements authorized not altering coverage under Rate Bureau jurisdiction.**

(a) Member companies writing private passenger automobile or homeowners' insurance under this Article may incorporate optional enhancements to their automobile and homeowners' programs as an endorsement to an automobile or homeowners' policy issued under this Article if the insurer has filed the proposed enhancement with the Commissioner and if the proposed enhancement is approved by the Commissioner. Any approved optional enhancements shall be considered outside the authority of the Rate Bureau. If the proposed enhancement will include an additional premium charge, the proposed premium charge shall be included with the proposed program enhancements filed with the Commissioner. The Commissioner shall review the proposed premium charges and approve them if the Commissioner finds that they are based on sound actuarial principles. Amendments to private passenger automobile or homeowners' program enhancements are subject to the same requirements as initial filings. Neither the acceptance, renewal of a policy, nor any underwriting rating criteria shall be conditioned by a company upon the acceptance by the policyholder of any optional automobile or homeowners' enhancements. A rate amendment authorized by this section is not a rate deviation and is not subject to the requirements for rate deviations set forth in G.S. 58-36-30(a).

(b) Insurers shall utilize statistical codes outlined by their statistical organization in reporting premiums and losses resulting from program enhancements filed under this section. Those statistical codes shall be substantially different than the codes utilized for data collected for rate-making purposes in order to avoid commingling of the data."

#### **PART V. EFFECTIVE DATE**

**SECTION 6.** Sections 1 and 3 of this act become effective July 1, 2015. Section 2 of this act becomes effective January 1, 2017. Section 5 of this act becomes effective July 1, 2015, and applies to optional enhancements, as described in that section, filed and approved on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2<sup>nd</sup> day of July, 2015.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

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Pat McCrory  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2015