

## Article 7.

### General Domestic Companies.

#### **§ 58-7-1. Application of this Chapter and general laws.**

The general provisions of law relative to the powers, duties, and liabilities of corporations apply to all incorporated domestic insurance companies where pertinent and not in conflict with other provisions of law relative to such companies or with their charters. All insurance companies of this State shall be governed by this Chapter, notwithstanding anything in their special charters to the contrary, provided notice of the acceptance of this Chapter is filed with the Commissioner. (1899, c. 54, s. 19; Rev., s. 4721; C.S., s. 6324; 1991, c. 720, s. 4; 2006-105, s. 1.2.)

#### **§ 58-7-5. Extension of existing charters.**

Domestic insurance companies incorporated by special acts, whose charters are subject to limitation of time, shall, after the limitation expires, and upon filing statement and paying the taxes and fees required for an amendment of the charter, continue to be bodies corporate, subject to all general laws applicable to such companies. (1899, c. 54, s. 20; Rev., s. 4722; C.S., s. 6325.)

#### **§ 58-7-10. Certificate required before issuing policies.**

No domestic insurance company may issue policies until upon examination of the Commissioner, his deputy or examiner, it is found to have complied with the laws of the State, and until it has obtained from the Commissioner a certificate setting forth that fact and authorizing it to issue policies. The issuing of policies in violation of this section renders the company liable to the forfeiture prescribed by law, but such policies are binding upon the company. (1899, c. 54, ss. 21, 99; 1903, c. 438, s. 10; Rev., s. 4723; C.S., s. 6326; 1991, c. 720, s. 4.)

#### **§ 58-7-15. Kinds of insurance authorized.**

The kinds of insurance that may be authorized in this State, subject to the other provisions of Articles 1 through 64 of this Chapter, are set forth in this section. Except to the extent an insurer participates in a risk sharing plan under Article 42 of this Chapter, nothing in this section requires any insurer to insure every kind of risk that it is authorized to insure. Except to the extent an insurer participates in a risk sharing plan under Article 42 of this Chapter, no insurer may transact any other business than that specified in its charter and articles of association or incorporation. The power to do any kind of insurance against loss of or damage to property includes the power to insure all lawful interests in the property and to insure against loss of use and occupancy and rents and profits resulting therefrom; but no kind of insurance includes life insurance or insurance against legal liability for personal injury or death unless specified in this section. In addition to any power to engage in any other kind of business than an insurance business that is specifically conferred by the provisions of Articles 1 through 64 of this Chapter, any insurer authorized to do business in this State may engage in such other kinds of business to the extent necessarily or properly incidental to the kinds of insurance business that it is authorized to do in this State. Each of the following indicates the scope of the kind of insurance business specified:

- (1) "Life insurance", meaning every insurance upon the lives of human beings and every insurance appertaining thereto. The business of life insurance includes the granting of endowment benefits; additional benefits in the event of death by accident or accidental means; additional benefits operating to safeguard the contract from lapse, or to provide a special surrender value, in the event of total

- and permanent disability of the insured, including industrial sick benefit; and optional modes of settlement of proceeds.
- (2) "Annuities", meaning all agreements to make periodical payments, whether in fixed or variable dollar amounts, or both, at specified intervals.
  - (3) "Accident and health insurance", meaning:
    - a. Insurance against death or personal injury by accident or by any specified kinds of accident and insurance against sickness, ailment or bodily injury except as specified in paragraph b following; and
    - b. "Noncancelable disability insurance," meaning insurance against disability resulting from sickness, ailment or bodily injury (but not including insurance solely against accidental injury), under any contract that does not give the insurer the option to cancel or otherwise terminate the contract at or after one year from its effective date or renewal date.
  - (4) "Fire insurance", meaning insurance against loss of or damage to any property resulting from fire, including loss or damage incident to the extinguishment of a fire or to the salvaging of property in connection therewith.
  - (5) "Miscellaneous property insurance", meaning loss of or damage to property resulting from:
    - a. Lightning, smoke or smudge, windstorm, tornado, cyclone, earthquake, volcanic eruption, rain, hail, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, or
    - b. Insects, or blights, or from disease of such property other than animals, or
    - c. Electrical disturbance causing or concomitant with a fire or an explosion in public service or public utility property, or
    - d. Bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, or explosion; but not including any kind of insurance specified in subdivision (9), except insurance against loss or damage to property resulting from:
      - 1. Explosion of pressure vessels (except steam boilers of more than 15 pounds pressure) in buildings designed and used solely for residential purposes by not more than four families,
      - 2. Explosion of any kind originating outside of the insured building or outside of the building containing the property insured,
      - 3. Explosion of pressure vessels that do not contain steam or that are not operated with steam coils or steam jackets,
      - 4. Electrical disturbance causing or concomitant with an explosion in public service or public utility property.
  - (6) "Water damage insurance," meaning insurance against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires or of water pipes or other conduits or containers; or resulting from casual water entering through leaks or openings in buildings or by seepage through building

- walls; but not including loss or damage resulting from flood or the rising of the waters of the ocean or its tributaries; and including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits, or containers.
- (7) "Burglary and theft insurance," meaning:
- a. Insurance against loss of or damage to any property resulting from burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment by any person or persons, or from any attempt at any of the foregoing, and
  - b. Insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail.
- (8) "Glass insurance," meaning insurance against loss of or damage to glass and its appurtenances resulting from any cause.
- (9) "Boiler and machinery insurance," meaning insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to:
- a. Any boiler, heater or other fired pressure vessel;
  - b. Any unfired pressure vessel;
  - c. Pipes or containers connected with any of said boilers or vessels;
  - d. Any engine, turbine, compressor, pump or wheel;
  - e. Any apparatus generating, transmitting or using electricity;
  - f. Any other machinery or apparatus connected with or operated by any of the previously named boilers, vessels or machines;
- and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise.
- (10) "Elevator insurance," meaning insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire.
- (11) "Animal insurance," meaning insurance against loss of or damage to any domesticated or wild animal resulting from any cause.
- (12) "Collision insurance," meaning insurance against loss of or damage to any property of the insured resulting from collision of any other object with the property, but not including collision to or by elevators or to or by vessels, craft, piers or other instrumentalities of ocean or inland navigation.
- (13) "Personal injury liability insurance," meaning insurance against legal liability of the insured, and against loss, damage, or expense incident to a claim of such liability; including personal excess liability or personal "umbrella" insurance; and including an obligation of the insurer to pay medical, hospital, surgical, or funeral benefits; and in the case of motor vehicle liability insurance including also disability and death benefits to injured persons, irrespective of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as a result of negligence in rendering expert, fiduciary, or professional service; but not including any kind of insurance specified in subdivision (15) of this section.

- (14) "Property damage liability insurance," meaning insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability, arising out of the loss or destruction of, or damage to, the property of any other person, but not including any kind of insurance specified in subdivision (13) or (15).
- (15) "Workers' compensation and employer's liability insurance," meaning insurance against the legal liability, whether imposed by common law or by statute or assumed by contract, of any employer for the death or disablement of, or injury to, the employer's employee.
- (16) "Fidelity and surety insurance," meaning:
- a. Guaranteeing the fidelity of persons holding positions of public or private trust;
  - b. Becoming surety on, or guaranteeing the performance of, any lawful contract except the following:
    1. A contract of indebtedness secured by title to, or mortgage upon, or interest in, real or personal property;
    2. Any insurance contract except reinsurance;
  - c. Becoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal authorities in lieu of deposits as security for the performance of insurance contracts;
  - d. Guaranteeing contracts of indebtedness secured by any title to, or interest in, real property, only to the extent required for the purpose of refunding, extending, refinancing, liquidating or salvaging obligations heretofore lawfully made and guaranteed;
  - e. Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger; but not including any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to the insured's furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.
- (17) "Credit insurance," meaning indemnifying merchants or other persons extending credit against loss or damage resulting from the nonpayment of debts owed to them; and including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to the insurer or to any person so insured by the insurer; and also including insurance where the debt is secured by either (a) a junior lien on real estate or (b) a first lien on real estate as long as (i) the purpose of the debt being insured is not for the purchase of the real estate and the insurance is limited to twenty-five percent (25%) of the insurer's

aggregate insured risk outstanding, before reinsurance ceded or assumed or (ii) the insurance is not included within the definition of mortgage guaranty insurance.

- (18) "Title insurance," meaning insuring the owners of real property and chattels real and other persons lawfully interested therein against loss by reason of defective titles and encumbrances thereon and insuring the correctness of searches for all instruments, liens or charges affecting the title to that property, including the power to procure and furnish information relative thereto, and other incidental powers that are specifically granted in Articles 1 through 64 of this Chapter.
- (19) "Motor vehicle or aircraft insurance," meaning insurance against loss of or damage resulting from any cause to motor vehicles or aircraft and their equipment, and against legal liability of the insured for loss or damage to another's property resulting from the ownership, maintenance or use of motor vehicles or aircraft and against loss, damage or expense incident to a claim of such liability. This subdivision does not apply to commercial aircraft as defined in G.S. 58-1-5.
- (20) "Marine insurance," meaning insurance against any and all kinds of loss or damage to:
- a. Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and
  - b. Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of the insurance (but not including life insurance or surety bonds nor insurance against loss because of bodily injury to the person arising out of the ownership, maintenance or use of automobiles), and
  - c. Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and
  - d. Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail,

explosion, earthquake, riot and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways against all risks.

- (21) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.
- (22) "Miscellaneous insurance," meaning insurance against any other casualty authorized by the charter of the company, not included in this section, which is a proper subject of insurance.
- (23) "Mortgage guaranty insurance," meaning insurance against financial loss by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness which constitutes, or is equivalent to, a first lien or charge on the real estate, provided the improvement on the real estate is a residential building or a condominium unit or buildings designed for occupancy by not more than four families. (1899, c. 54, ss. 24, 26; 1903, c. 438, s. 1; Rev., s. 4726; 1911, c. 111, s. 1; C.S., s. 6327; 1945, c. 386; 1947, c. 721; 1953, c. 992; 1967, c. 624, s. 1; 1969, c. 616, s. 1; 1979, c. 714, s. 2; 1986, Ex. Sess., c. 7, ss. 2, 3; 1987, c. 731, s. 1, c. 864, ss. 39, 40; 1991, c. 644, s. 7; 1999-219, s. 5.1; 2001-236, s. 3; 2001-423, s. 3; 2007-127, ss. 1-3; 2008-124, s. 2.3.)

**§ 58-7-16. Funding agreements authorized.**

(a) As used in this section, "funding agreement" means an agreement that authorizes a licensed life insurer to accept funds and that provides for an accumulation of funds for the purpose of making one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A "funding agreement" is not an "annuity" as defined in G.S. 58-7-15; and is not a "security" as defined in G.S. 78A-2.

(b) Any insurer that is licensed to write life insurance or annuities in this State may deliver, or issue for delivery, funding agreements in this State.

(c) Funding agreements may be issued to persons authorized by a state or foreign country to engage in an insurance business or to their affiliates, including affiliates of the issuer. Issuance to an affiliate of an issuer is not subject to the provisions of Article 19 of this Chapter. Funding agreements may be issued to persons other than those licensed to write life insurance and annuities or their affiliates in order to fund one or more of the following:

- (1) Benefits under any employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.
- (2) The activities of an organization exempt from taxation under section 501(c) of the Internal Revenue Code or of any similar organization in a foreign country.
- (3) A program of the government of the United States, the government of a state, foreign country, or political subdivision, agency, or instrumentality thereof.
- (4) An agreement providing for one or more payments in satisfaction of a claim or liability.

(5) A program of an institution that has assets in excess of twenty-five million dollars (\$25,000,000).

(d) Amounts shall not be guaranteed or credited under a funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class.

(e) Amounts paid to the insurer and proceeds applied under optional modes of settlement under funding agreements may be allocated by the insurer to one or more separate accounts pursuant to G.S. 58-7-95.

(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

- (1) Standards to be followed in the approval of forms of funding agreements.
- (2) Reserves to be maintained by and valuation rules for insurers issuing funding agreements.
- (3) Accounting and reporting of funds credited under funding agreements.
- (4) Disclosure of information to be given to holders and prospective holders of funding agreements.
- (5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by and valuation rules for insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable. (1993 (Reg. Sess., 1994), c. 600, s. 1; 1998-212, s. 26B(e); 2001-334, s. 17.2.)

**§ 58-7-20: Repealed by Session Laws 1991, c. 681, s. 23.**

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

(a) The purpose of this section and G.S. 58-7-26 is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The General Assembly declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that interest, the General Assembly provides a mandate that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations in accordance with this section and G.S. 58-7-26, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The General Assembly declares that the matters contained in this section and G.S. 58-7-26 are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012.

(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), (4a), (4b), or (5) of this subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection only with regard to cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted to

write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) of this subsection have been satisfied. The following applies:

- (1) Credit for reinsurance – Reinsurer licensed in this State. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.
- (2) Credit for reinsurance – Accredited reinsurer. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Commissioner as a reinsurer in this State. In order to be eligible for accreditation, a reinsurer shall do all of the following:
  - a. File with the Commissioner evidence of its submission to this State's jurisdiction.
  - b. Submit to this State's authority to examine its books and records.
  - c. Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state.
  - d. File annually with the Commissioner a copy of its annual statement filed with the insurance regulator of its state of domicile, a copy of its most recent audited financial statement, and a fee of seven hundred fifty dollars (\$750.00) and either:
    1. Maintains a policyholders' surplus in an amount that is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the Commissioner within 90 days after its submission; or
    2. Maintains a policyholders' surplus in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the Commissioner.
- (3) Credit for reinsurance – Reinsurer domiciled in another state. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that uses standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:
  - a. Maintains a policyholders' surplus in an amount not less than twenty million dollars (\$20,000,000); and
  - b. Submits to the authority of this State to examine its books and records. The requirement in sub-subdivision (3)a. of this subsection does not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system.
- (4) Credit for reinsurance – Reinsurer maintaining trust funds.
  - a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in G.S. 58-7-26(b), for the payment of the valid claims of its United States ceding insurers, their assigns and successors



in interest. The assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the Commissioner and bear the expense of examination.

- b. Repealed by Session Laws 2001-223, s. 3.1. For applicability, see note.
- b1. Credit for reinsurance shall not be granted under this subdivision unless the form of the trust and any amendments to the trust have been approved by:
  - 1. The insurance regulator of the state where the trust is domiciled; or
  - 2. The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.
- b2. The form of the trust and any trust amendments also shall be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner.
- b3. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustees of the trust shall report to the Commissioner in writing the balance of the trust, shall list the trust's investments at the end of the preceding year, and shall certify the date of termination of the trust, if so planned, or shall certify that the trust will not expire before the following December 31.
- c. The following requirements apply to the following categories of assuming insurer:
  - 1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a surplus in trust of not less than twenty million dollars (\$20,000,000), except as provided in sub-sub-subdivision c.1a. of this subdivision.
  - 1a. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the insurance regulator of the state with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required

surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

2. In the case of a group including incorporated and individual unincorporated underwriters:
  - I. For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of an account in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.
  - II. For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section and G.S. 58-7-26, the trust shall consist of an account in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

In addition to these trusts, the group shall maintain in trust a surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account. Each incorporated member of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary insurance regulator as are the unincorporated members. Within 90 days after its financial statements are due to be filed with the group's domiciliary insurance regulator, the group shall provide to the Commissioner an annual certification by the group's domiciliary insurance regulator of the solvency of each underwriter member or, if a certification is

unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.

3. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars (\$10,000,000,000), calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall do all of the following:

- I. Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;
- II. Maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and
- III. File a properly executed NAIC Form AR-1 as evidence of the submission to this State's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

(4a) d. Repealed by Session Laws 2001-223, s. 3.1. For applicability, see note.  
Credit for reinsurance – Certified reinsurers. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this State and secures its obligations in accordance with the requirements of this subdivision:

- a. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
  1. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner pursuant to sub-subdivision f. of this subdivision;

2. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars (\$250,000,000) calculated in accordance with sub-sub-subdivision d.8. of this subdivision. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least two hundred fifty million dollars (\$250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars (\$250,000,000);
3. The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
  - I. Standard & Poor's;
  - II. Moody's Investors Service;
  - III. Fitch Ratings;
  - IV. A.M. Best Company; or
  - V. Any other nationally recognized statistical rating organization.
4. The assuming insurer must submit a properly executed NAIC Form CR-1 as evidence of its submission to the jurisdiction of this State, appointment of the Commissioner as an agent for service of process in this State, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The Commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the Commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards;
5. The certified reinsurer must agree to meet applicable information filing requirements, as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which is not otherwise public information subject to disclosure shall be exempted from disclosure under the North Carolina Public Records Act, Chapter 132 of the General Statutes, and shall be withheld from public disclosure. The applicable information filing requirements are as follows:

- I. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license, or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
  - II. Annually, NAIC Form CR-F or CR-S, as applicable;
  - III. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in sub-sub-sub-subdivision a.5.IV. of this subdivision;
  - IV. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion, as filed with the certified reinsurer's supervisor, with a translation into English. Upon the initial certification, audited financial statements for the last two years filed with the certified reinsurer's supervisor;
  - V. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;
  - VI. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
  - VII. Any other information that the Commissioner may reasonably require.
6. Any other requirements for certification deemed relevant by the Commissioner.
- b. An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of sub-subdivision a. of this subdivision:
    1. The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Commissioner to provide adequate protection;
    2. The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
    3. Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall

provide to the Commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

- c. Certification procedure. –
  - 1. The Commissioner shall post notice on the Department's Web site promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Commissioner may not take final action on the application until at least 30 days after posting the notice required by this sub-subdivision.
  - 2. The Commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned to the certified reinsurer in accordance with sub-subdivision d. of this subdivision.
  - 3. Any other requirements reasonably imposed by the Commissioner.
- d. Certified reinsurer rating. – The Commissioner shall assign a rating to each certified reinsurer on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association, including incorporated and individual unincorporated underwriters, that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. The Commissioner shall publish a list of all certified reinsurers and their ratings. Factors that may be considered as part of the evaluation process include the following:
  - 1. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

<b>Ratings</b>	<b>Best</b>	<b>S&amp;P</b>	<b>Moody's</b>	<b>Fitch</b>
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+,AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+	BB+, BB, BB-,	Ba1, Ba2, Ba3,	BB+, BB, BB-,

C, C-, D, E, F	B+, B, B-, CCC, CC, C, D, R	B1, B2, B3, Caa, Ca, C	B+, B, B-, CCC+, CC, CCC-, DD
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2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
3. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F for property/casualty reinsurers or Schedule S for life and health reinsurers;
4. For certified reinsurers not domiciled in the United States, a review annually of NAIC Form CR-F for property/casualty reinsurers or NAIC Form CR-S for life and health reinsurers;
5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of the ceding insurers' in the NAIC Annual Statement Blank Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership. Based on the analysis conducted, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the Commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level if the Commissioner finds that:
  - I. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed one hundred thousand dollars (\$100,000) for each cedent; or
  - II. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds fifty million dollars (\$50,000,000).
6. Regulatory actions against the certified reinsurer;
7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in sub-sub-subdivision d.8. of this subdivision;
8. For certified reinsurers not domiciled in the United States, audited financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor, with a translation into English. Upon the initial application for certification, the Commissioner will consider

audited financial statements for the last two years filed with its non-United States jurisdiction supervisor;

9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
  10. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
  11. Any other information deemed relevant by the Commissioner.
- e. Credit allowed a ceding insurer. – The Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this State at all times for which statutory financial statement credit for reinsurance is claimed under this subdivision. The credit allowed a ceding insurer shall be based upon the security held by or on behalf of the ceding insurer in accordance with the rating assigned to the certified reinsurer by the Commissioner pursuant to sub-subdivision d. of this subdivision. The security shall be maintained and in a form consistent with the provisions of G.S. 58-7-26. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1.	<b>Ratings</b>	<b>Security Required</b>
	Secure – 1.....	0%
	Secure – 2.....	10%
	Secure – 3.....	20%
	Secure – 4.....	50%
	Secure – 5.....	75%
	Vulnerable – 6.....	100%

2. If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (4) of this subsection, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security, as permitted by this subdivision or comparable laws of other United States jurisdictions, and for its obligations subject to subdivision (4) of this subsection. It shall be a condition to the grant of certification under this subdivision that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the insurance regulator with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.



3. The minimum trusteed surplus requirements provided in subdivision (4) of this subsection are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subdivision, except that such trust shall maintain a minimum trusteed surplus of ten million dollars (\$10,000,000).
4. With respect to obligations incurred by a certified reinsurer under this subdivision, if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.
5. For purposes of this subdivision, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations. As used in this sub-sub-subdivision, the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status. If the Commissioner continues to assign a higher rating as permitted by other provisions of this subdivision, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.
6. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
7. The Commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation or liquidation or conservation against the ceding insurer.
8. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company insurer as a result of a loss from a catastrophic occurrence as recognized by the Commissioner. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
  - I. Line 1: Fire.
  - II. Line 2: Allied lines.
  - III. Line 3: Farmowners multiple peril.
  - IV. Line 4: Homeowners multiple peril.
  - V. Line 5: Commercial multiple peril.

- VI. Line 9: Inland marine.
  - VII. Line 12: Earthquake.
  - VIII. Line 21: Auto physical damage.
9. Credit for reinsurance under this sub-subdivision shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this sub-subdivision with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
  10. Nothing in this sub-subdivision shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this sub-subdivision.
- f. Qualified jurisdictions. –
1. The Commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the Commissioner as a certified reinsurer.
  2. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Commissioner, include, but are not limited to, the following:
    - I. The framework under which the assuming insurer is regulated.
    - II. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
    - III. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

- IV. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
  - V. The domiciliary regulator's willingness to cooperate with United States regulators in general and the Commissioner in particular.
  - VI. The history of performance by assuming insurers in the domiciliary jurisdiction.
  - VII. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
  - VIII. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
  - IX. Any other matters deemed relevant by the Commissioner.
- 3. The Commissioner shall consider the list of qualified jurisdictions published by the NAIC in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the NAIC's list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification with respect to the criteria provided under sub-sub-sub-subdivision f.2.I. through IX. of this subdivision.
  - 4. United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.
  - 5. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.
- g. Recognition of certification issued by an NAIC accredited jurisdiction.
    - If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed NAIC Form CR-1 and such additional information as the Commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this State. Any change in the certified

reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of any change in its status or rating within 10 days after receiving notice of the change. The Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with sub-subdivision d. of this subdivision. The Commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Commissioner suspends or revokes the certified reinsurer's certification in accordance with sub-subdivision j. of this subdivision, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

- h. Inactive certified reinsurer. – A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subdivision, and the Commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.
- i. Change in rating or revocation of certification. –
  - 1. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of sub-subdivision d. of this subdivision.
  - 2. The Commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this subdivision or, if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
  - 3. If the rating of a certified reinsurer is upgraded by the Commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Commissioner, the Commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

4. Upon revocation of the certification of a certified reinsurer by the Commissioner, the assuming insurer shall be required to post security in accordance with G.S. 58-7-26 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust, in accordance with subdivision (4) of this subsection, the Commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Commissioner to be at high risk of uncollectibility.
  - j. Mandatory funding clause. – In addition to the clauses required by rule, reinsurance contracts entered into or renewed under this subdivision shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this subdivision for reinsurance ceded to the certified reinsurer.
  - k. NAIC reporting and notification requirements. – The Commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.
- (4b) Credit for reinsurance – Reciprocal jurisdiction. –
- a. The following definitions apply in this subdivision:
    1. Covered agreement. – An agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance.
    2. Reciprocal jurisdiction. – A jurisdiction as designated by the Commissioner pursuant to sub-subdivision c. of this subdivision that meets one of the following:
      - I. A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union;

- II. A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
- III. A qualified jurisdiction, as determined by the Commissioner pursuant to sub-subdivision f. of subdivision (4a) of this subsection, which is not otherwise described in sub-sub-subdivisions I. or II. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision and which the Commissioner determines meets all of the following additional requirements, consistent with the terms and conditions of in-force covered agreements:
  - A. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a United States domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;
  - B. Does not require a United States domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-United States jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;
  - C. Recognizes the United States, state regulatory approach to group supervision and group capital by providing written confirmation by a competent regulatory authority in such qualified jurisdiction that insurers and insurance groups that are domiciled or maintain their headquarters in this State or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the Commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and
  - D. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their

parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Commissioner in accordance with a memorandum of understanding or similar document between the Commissioner and such qualified jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

3. Solvent scheme of arrangement. – A foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.
- b. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this State to an assuming insurer meeting each of the following conditions:
1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.
  2. The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in sub-sub-subdivision 7. of this sub-subdivision, according to the methodology of its domiciliary jurisdiction, in the following amounts:
    - I. No less than two hundred fifty million dollars (\$250,000,000); or
    - II. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:
      - A. Minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least two hundred fifty million dollars (\$250,000,000); and
      - B. A central fund containing a balance of the equivalent of at least two hundred fifty million dollars (\$250,000,000).

3. The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as follows:
  - I. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision I. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision, the ratio specified in the applicable covered agreement;
  - II. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision II. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision, a risk-based capital ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC;
  - III. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision III. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the Commissioner determines to be an effective measure of solvency; or
  - IV. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.
4. The assuming insurer must agree to and provide adequate assurance to the Commissioner, in the form of a properly executed NAIC Form RJ-1, of its agreement to the following:
  - I. The assuming insurer must provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth in sub-sub-subdivision 2. or 3. of sub-subdivision b. of this subdivision, or if any regulatory action is taken against it for serious noncompliance with applicable law;
  - II. The assuming insurer must consent in writing to the jurisdiction of the courts of this State and to the appointment of the Commissioner as agent for service of process. The Commissioner may require that consent for service of process be provided to the Commissioner and included in each reinsurance agreement under the Commissioner's jurisdiction. Nothing in this provision shall limit, or in any way alter, the capacity of parties to a



- reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;
- III. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;
  - IV. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate, if applicable;
  - V. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this State's ceding insurers, and agree to notify the ceding insurer and the Commissioner and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of subdivision (4a) of subsection (b) of this section, G.S. 58-7-26(a), and as specified by the Commissioner in regulation; and
  - VI. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in sub-sub-subdivision 5. of sub-subdivision b. of this subdivision.
5. The assuming insurer or its legal successor must provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, the following documentation to the Commissioner:
    - I. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

- II. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;
  - III. Prior to entry into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and
  - IV. Prior to entry into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in sub-sub-subdivision 6. of sub-subdivision b. of this subdivision.
6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:
- I. More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the Commissioner;
  - II. More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars (\$100,000), or as otherwise specified in a covered agreement; or
  - III. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds fifty million dollars (\$50,000,000), or as otherwise specified in a covered agreement.
7. The assuming insurer's supervisory authority must confirm to the Commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in sub-sub-subdivisions 2. and 3. of sub-subdivision b. of this subdivision.

Nothing in this sub-subdivision shall preclude an assuming insurer from providing the Commissioner with information on a voluntary basis.

- c. The Commissioner shall timely create and publish a list of reciprocal jurisdictions [as follows]:

1. A list of reciprocal jurisdictions is published through the NAIC committee process. The Commissioner's list shall include any reciprocal jurisdiction, as defined under sub-sub-sub-subdivisions I. and II. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision, and shall consider any other reciprocal jurisdiction included on the NAIC list. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.
  2. The Commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC committee process, except that the Commissioner shall not remove from the list a reciprocal jurisdiction as defined under sub-sub-sub-subdivisions I. and II. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed if otherwise allowed pursuant to this section or G.S. 58-7-26.
- d. The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subdivision and to which cessions shall be granted credit in accordance with this subdivision. The Commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the Commissioner as required under sub-sub-subdivision 4. of sub-subdivision b. of this subdivision and complies with any additional requirements that the Commissioner may impose by law or regulation, except to the extent that they conflict with an applicable covered agreement. [The following applies:]
1. If an NAIC accredited jurisdiction has determined that the conditions set forth in sub-subdivision b. of this subdivision have been met, the Commissioner has the discretion to defer to that jurisdiction's determination and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this sub-subdivision. The Commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of sub-subdivision b. of this subdivision.

2. When requesting that the Commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed NAIC Form RJ-1 and additional information as the Commissioner may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.
- e. If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subdivision, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subdivision. [The following applies:]
    1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with G.S. 58-7-26.
    2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of G.S. 58-7-26.
  - f. Before denying statement credit or imposing a requirement to post security with respect to sub-subdivision e. of this subdivision, or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner shall:
    1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in sub-subdivision b. of this subdivision;
    2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;
    3. After the expiration of 90 days or less, as set out in sub-sub-subdivision 2. of sub-subdivision f. of this subdivision, if the Commissioner determines that no or insufficient action was taken by the assuming insurer, the Commissioner may impose any of the requirements as set out in sub-subdivision f. of this subdivision; and
    4. Provide a written explanation to the assuming insurer of any of the requirements set out in sub-subdivision f. of this subdivision.

- g. If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.
  - h. Nothing in this subdivision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section, or other applicable law or regulation.
  - i. Credit may be taken under this subdivision only for reinsurance agreements entered into, amended, or renewed on or after September 1, 2021, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to sub-subdivision b. of this subdivision and (ii) the effective date of the new reinsurance agreement, amendment, or renewal. [The following applies:]
    - 1. This sub-subdivision does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subdivision, as long as the reinsurance qualifies for credit under any other applicable provision of this section or G.S. 58-7-26.
    - 2. Nothing in this subdivision shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.
    - 3. Nothing in this subdivision shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.
- (5) Exception for noncompliant assuming insurer. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1), (2), (3), (4), (4a), or (4b) of this subsection, but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.
- (6) Curative contract terms for assuming insurer. – If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this State, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:
- a. That if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the ceding insurer's request, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court if there is an appeal; and

- b. To designate the Commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding begun by or on behalf of the ceding insurer. This subdivision does not affect the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if the obligation is created in the agreement.
- (7) Required trust agreement provisions. – If the assuming insurer does not meet the requirements of subdivision (1), (2), (3), or (4b) of this subsection, the credit permitted by subdivision (4) or (4a) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:
- a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by sub-subdivision (4)c. of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the public official with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the public official with regulatory oversight all of the assets of the trust fund.
  - b. The assets shall be distributed by, and claims shall be filed with and valued by, the public official with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.
  - c. If the public official with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, those assets shall be returned by the public official with regulatory oversight to the trustee for distribution in accordance with the trust agreement.
  - d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.
- (8) Failure to meet requirements. –
- a. If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commissioner may suspend or revoke the reinsurer's accreditation or certification.
  - b. The Commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the Commissioner's order on hearing, unless:
    1. The reinsurer waives its right to hearing;
    2. The Commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the

primary certifying state of the reinsurer under sub-subdivision (4a)f. of this subsection; or

3. The Commissioner finds that an emergency requires immediate action, and a court of competent jurisdiction has not stayed the Commissioner's action.
- c. While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with G.S. 58-7-26. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with sub-subdivision (4a)e. of this subsection or G.S. 58-7-26.
- (9) Concentration risk. –
- a. A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.
  - b. A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent (20%) of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(c) This section applies to all reinsurance cessions made on or after January 1, 1992, under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 1992. (1991, c. 681, s. 22; 1993, c. 452, s. 42; 1993 (Reg. Sess., 1994), c. 678, s. 8; 1995, c. 193, s. 13; c. 360, s. 2(g); 2001-223, s. 3.1; 2009-451, s. 21.15(a); 2017-136, s. 2; 2019-57, s. 5; 2021-114, s. 1.)

#### **§ 58-7-22. Term and universal life insurance reserve financing.**

(a) Purpose and Intent. – The purpose and intent of this section is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums or guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees, and to ensure that, with respect to those financing arrangements, funds consisting of primary security and other security are held by or on behalf of

ceding insurers in the forms and amounts required by this section. In general, for reinsurance ceded for reserve financing purposes, some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer meet one of the following:

- (1) Are issued by the ceding insurer or its affiliates.
  - (2) Are not unconditionally available to satisfy the general account obligations of the ceding insurer.
  - (3) Create a reimbursement, indemnification, or other similar obligation on the part of the ceding insurer or any of its affiliates, other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.
- (b) Definitions. – The following definitions apply in this section:
- (1) Actuarial method. – The methodology used to determine the required level of primary security, as described in subsection (e) of this section.
  - (2) Covered policies. – Subject to the exemptions described in subsection (d) of this section and, other than grandfathered policies, policies of the following policy types:
    - a. Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or
    - b. Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.
  - (3) Grandfathered policies. – Policies of the types described in sub-subdivisions a. and b. of subdivision (2) of subsection (b) of this section that were both:
    - a. Issued prior to January 1, 2015.
    - b. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in subsection (d) of this section had that subsection then been in effect.
  - (4) Noncovered policies. – Any policy that does not meet the definition of covered policies, including grandfathered policies.
  - (5) Other security. – Any security other than security meeting the definition of primary security that is acceptable to the Commissioner.
  - (6) Primary security. – All of the following forms of security:
    - a. Cash.
    - b. Securities listed by the Securities Valuation Office of the NAIC meeting the requirements of G.S. 58-7-26(a)(2), but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates.
    - c. For security held in connection with funds withheld and modified coinsurance reinsurance treaties, any of the following forms of security:
      1. Commercial loans in good standing of CM3 quality and higher.
      2. Policy loans.



3. Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.
- (7) Required level of primary security. – The dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.
  - (8) Valuation manual. – The valuation manual adopted by the NAIC as described in G.S. 58-58-51 with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.
  - (9) VM-20. – The requirements for principle-based reserves for life products, including all relevant definitions, as outlined in the valuation manual.
- (c) Applicability. – This section shall apply to reinsurance treaties that cede liabilities pertaining to covered policies issued by any life insurance company domiciled in this State. This section, G.S. 58-7-21, and G.S. 58-7-26 shall apply to those reinsurance treaties. If there is a direct conflict between the provisions of this section and G.S. 58-7-21, or G.S. 58-7-26, then the provisions of this section shall apply, but only to the extent of the conflict.
- (d) Exemptions from this Section. – This section does not apply to any of the following situations:
- (1) Reinsurance of any of the following:
    - a. Policies that satisfy the criteria for exemption for attained age-based yearly renewable term life insurance policies set forth in 11 NCAC 11F.0404(f) or for unitary reserves for certain n-year renewable term life insurance policies set forth in 11 NCAC 11F.0404(g) and that are issued before the later of the following dates:
      1. September 1, 2021.
      2. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020.
    - b. Portions of policies that satisfy the criteria for exemption for yearly renewable term reinsurance set forth in 11 NCAC 11F.0404(e) and which are issued before the later of the following dates:
      1. September 1, 2021.
      2. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020.
    - c. Any universal life policy that meets all of the following requirements:
      1. The secondary guarantee period, if any, is five years or less.
      2. The specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary valuation tables and valuation interest rate applicable to the issue year of the policy.
      3. The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period.
    - d. Credit life insurance.

- e. Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.
  - f. Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.
- (2) Reinsurance ceded to an assuming insurer that meets the applicable requirements of G.S. 58-7-21(b)(4).
- (3) Reinsurance ceded to an assuming insurer that meets the applicable requirements of subdivision (1), (2), or (3) of G.S. 58-7-21(b) and that also meets all of the following criteria:
- a. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to the NAIC's Statement of Statutory Accounting Principles No. 1.
  - b. Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event, as those terms are defined in Article 12 of Chapter 58 of the General Statutes, when its risk-based capital is calculated in accordance with the life risk-based capital report, including overview and instructions for companies, as the same may be amended by the NAIC, without deviation.
- (4) Reinsurance ceded to an assuming insurer that meets the applicable requirements of subdivision (1), (2), or (3) of G.S. 58-7-21(b) and that also meets all of the following criteria:
- a. Is not an affiliate, as defined in G.S. 58-19-5, of either of the following:
    - 1. The insurer ceding the business to the assuming insurer.
    - 2. Any insurer that directly or indirectly ceded the business to that ceding insurer.
  - b. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual.
  - c. Is licensed or accredited in at least 10 states, including its state of domicile.
  - d. Is not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime.
  - e. Is not, or would not be, below five hundred percent (500%) of the authorized control level risk-based capital, as defined in G.S. 58-12-2, when its risk-based capital is calculated in accordance with the life risk-based capital report, including overview and instructions for companies, as the same may be amended by the NAIC, without deviation, and without recognition of any departures from NAIC

statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus.

- (5) Reinsurance ceded to an assuming insurer that meets any of the following criteria:
- a. Meets the requirements specified under G.S. 58-7-21(b)(4b) in this State.
  - b. Is certified in this State.
  - c. Maintains at least two hundred fifty million dollars (\$250,000,000) in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments adopted by the NAIC and excluding the impact of any permitted or prescribed practices and is either:
    1. Licensed in at least 26 states.
    2. Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

- (6) Reinsurance not otherwise exempt under subdivisions (1) through (5) of this subsection if the Commissioner, after consulting with the NAIC Financial Analysis Working Group or other applicable group of regulators designated by the NAIC, determines under all the facts and circumstances that all of the following apply:
- a. The risks are clearly outside of the intent and purpose of this section.
  - b. The risks are included within the scope of this section only as a technicality.
  - c. The application of this section to those risks is not necessary to provide appropriate protection to policyholders.

The Commissioner shall publicly disclose any decision made pursuant to this subdivision to exempt a reinsurance treaty from this section and the general basis of that decision, including a summary description of the treaty.

(e) The Actuarial Method and Valuation Used for Purposes of Calculation. – The following applies to this section:

- (1) The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this section shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the valuation manual then in effect, applied as follows:
- a. For covered policies described in sub-subdivision a. of subdivision (2) of subsection (b) of this section, the actuarial method is the greater of the deterministic reserve or the net premium reserve regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve. In addition, if those covered policies are reinsured in a reinsurance treaty that also contains covered policies described in sub-subdivision b. of subdivision (2) of subsection (b) of this section, then the ceding insurer may elect to instead use sub-subdivision b. of

this subdivision as the actuarial method for the entire reinsurance agreement. Whether this sub-subdivision or sub-subdivision b. of this subdivision is used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

- b. For covered policies described in sub-subdivision b. of subdivision (2) of subsection (b) of this section, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve, regardless of whether the criteria for exemption testing can be met.
- c. Except as provided in sub-subdivision d. of this subdivision, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.
- d. If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the covered policies, then the required level of primary security may be reduced as follows:
  1. If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, then the required level of primary security, as well as any adjustment under sub-subdivision c. of this subdivision, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded.
  2. If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, then the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement.
  3. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, then the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed the value of  $cx$  divided by double the number of reinsurance premiums per year, where  $cx$  is calculated using the same mortality table used in calculating the net premium reserve.

4. For any other treaty ceding a portion of risk to a different reinsurer, including stop loss, excess of loss, and other nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

It is possible for any combination of sub-sub-subdivisions in this sub-subdivision to apply. In this case, the adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer shall document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than one hundred percent (100%) of the risk.

The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

- e. In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.
  - f. If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this section, then in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this section.
  - g. If a reinsurance treaty subject to this section cedes risk on both covered and noncovered policies, then credit for the ceded reserves shall be determined as follows:
    1. The actuarial method shall be used to determine the required level of primary security for the covered policies, and subsections (f), (g), and (h) of this section shall be used to determine the reinsurance credit for the covered policy reserves.
    2. Credit for the noncovered policy reserves shall be granted only to the extent that, in addition to the security held to satisfy the requirements of sub-subdivision a. of this subdivision, security is held by or on behalf of the ceding insurer, in accordance with G.S. 58-7-21(b) and G.S. 58-7-26(a). Any primary security used to meet the requirements of this sub-subdivision may not be used to satisfy the required level of primary security for the covered policies.
- (2) Valuation used for purposes of calculations. – For the purposes of both calculating the required level of primary security pursuant to the actuarial method under subsection (e) of this section and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, both of the following shall apply:

- a. For assets, including any assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if those assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices.
- b. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31 on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

(f) Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation. – Subject to the exemptions described in subsection (d) of this section and the provisions of subsections (g) and (h) of this section, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies pursuant to G.S. 58-7-21(b) or G.S. 58-7-26(a) if, in addition to all other requirements imposed by law or regulation, all the following requirements are met on a treaty-by-treaty basis:

- (1) The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of G.S. 58-58-50 and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this section does not exceed the proportionate share of those reserves ceded under the contract.
- (2) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this section and provides support for its calculation, as determined to be acceptable to the Commissioner.
- (3) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of G.S. 58-7-26(a) on a funds withheld, trust, or modified coinsurance basis.
- (4) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to subdivision (3) of this subsection, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of G.S. 58-7-26(a).
- (5) Any trust used to satisfy the requirements of this subsection shall comply with all of the conditions and qualifications of 11 NCAC 11C.0504, except for the following:
  - a. Funds consisting of primary security or other security held in trust shall, for the purposes identified in subdivision (2) of subsection (e) of this section, be valued according to the valuation rules set forth by that subdivision, as applicable.

- b. There are no affiliate investment limitations with respect to any security held in such trust if that security is not needed to satisfy the requirements of subdivision (3) of this subsection.
- c. The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust, when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subdivision (3) of this subsection, below one hundred two percent (102%) of the level required by subdivision (3) of this section at the time of the withdrawal or substitution.
- d. The determination of reserve credit under 11 NCAC 11C.0504(d)(3) shall be determined according to the valuation rules set forth in subdivision (2) of subsection (e) of this section, as applicable.

(6) The reinsurance treaty has been approved by the Commissioner.

(g) The requirements of subsection (f) of this section must be satisfied as of the date that risks under covered policies are ceded, if that date is on or after the effective date of this section, and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subdivision (3) or (4) of subsection (f) of this section with respect to any reinsurance treaty under which covered policies have been ceded. If a ceding insurer becomes aware at any time that a deficiency under subdivision (3) or (4) of subsection (f) of this section exists, then it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(h) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of subsection (c) of this section shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether, as of the end of the immediately preceding calendar quarter, the valuation date, the requirements of subdivisions (3) and (4) of subsection (f) of this section were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to subdivision (3) of subsection (f) of this section, unless either of the following applies:

- (1) The requirements of subdivisions (3) and (4) of subsection (f) of this section were fully satisfied as of the valuation date as to such reinsurance treaty.
- (2) Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security or other security, as applicable, in an amount and in a form as would have caused the requirements of subdivisions (3) and (4) of subsection (f) of this section to be fully satisfied as of the valuation date.

Nothing in this subsection shall be construed to allow a ceding company to maintain any deficiency under subdivisions (3) and (4) of subsection (f) of this section for any period of time longer than is reasonably necessary to eliminate it.

(i) Severability. – If any provision of this section is held invalid, the remainder shall not be affected.

(j) Prohibition Against Avoidance. – No insurer that has covered policies to which this section applies, as set forth in subsection (c) of this section, shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the

purpose of such action, transaction or arrangement, or series thereof is to avoid the requirements of this section, or to circumvent its purpose and intent.

(k) Effective Date. – This section shall become effective September 1, 2021, and apply to all covered policies in force on or after that date. (2021-114, s. 2.)

**§ 58-7-25: Repealed by Session Laws 1991, c. 681, s. 23.**

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

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

- (1) Cash;
- (2) Securities that are listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subsection (b) of this section, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first; or
- (4) Any other form of security acceptable to the Commissioner.

(b) For purposes of subdivision (a)(3) of this section, a "qualified United States financial institution" means an institution that:

- (1) Is organized, or in the case of a United States office of a foreign banking organization licensed, under the laws of the United States or any of its states;
- (2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the Commissioner or the Securities Valuation Office of the NAIC to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

(c) A "qualified United States financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:



- (1) Is organized, or in the case of a United States branch or agency office of a foreign banking organization licensed, under the laws of the United States or any of its states and has been granted authority to operate with fiduciary powers; and
- (2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(d) This section applies to all reinsurance cessions made on or after January 1, 1992, under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 1992. (1991, c. 681, s. 22; 2001-223, s. 3.2; 2006-105, s. 1.3; 2017-136, s. 3.)

#### **§ 58-7-30. Insolvent ceding insurer.**

(a) Notwithstanding any other provision of this Article, no credit shall be allowed, as an admitted asset or as a reduction from liability, to any ceding insurer for reinsurance, unless the reinsurance is payable by the assuming insurer, on the basis of reported claims allowed by the court overseeing the liquidation against the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer, directly to the ceding insurer or to its domiciliary receiver except (1) where the contract or other written agreement specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer or (2) where the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution of the obligations of the ceding insurer to the payees.

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

(c) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose at its own expense in the proceeding where the claim is to be adjudicated, any defenses which it deems available to the ceding insurer or its liquidator. The expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer. (1985, c. 572, s. 1; 1995, c. 193, s. 14; c. 517, s. 4; 2001-223, s. 3.3.)

#### **§ 58-7-31. Life and health reinsurance agreements.**

(a) Notwithstanding any other provision of this Article, this section applies to every domestic life and accident and health insurer, to every other licensed life and accident and health insurer that is not subject to a substantially similar statute or administrative rule in its domiciliary state, and to every licensed property and casualty insurer with respect to its accident and health business. This section does not apply to assumption reinsurance, yearly renewable term reinsurance, nor to certain nonproportional reinsurance, such as stop loss or catastrophe reinsurance.

(b) No insurer shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

- (1) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall, using assumptions equal to the applicable statutory reserve basis on the business reinsured. Those expenses include commissions, premium taxes, and direct expenses including, but not limited to, billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured.
- (2) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer; except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest, and adjustments on funds withheld, and tax reimbursements, are not a deprivation of surplus or assets.
- (3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement; except that neither offsetting experience refunds against current and prior years' losses under the reinsurance agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the reinsurance agreement upon voluntary termination of in-force reinsurance by the ceding insurer are a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions that allow the reinsurer to reduce its risk under the reinsurance agreement.
- (4) The ceding insurer must, at specific points in time scheduled in the reinsurance agreement, terminate or automatically recapture all or part of the reinsurance ceded.
- (5) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. No ceding company shall pay reinsurance premiums or other fees or charges to a reinsurer that are greater than the direct premiums collected by the ceding company.
- (6) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies for a representative sampling of products or type of business, the risks that are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk Categories:

- a.= Morbidity.
- b.= Mortality.
- c.= Lapse. (This is the risk that a policy will voluntarily terminate before the recoupment of a statutory surplus strain experienced at issue of the policy.)
- d.= Credit Quality (C1). (This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.)
- e.= Reinvestment (C3). (This is the risk that interest rates will fall and funds reinvested [coupon payments or monies received upon asset maturity or call] will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.)
- f.= Disintermediation (C3). (This is the risk that interest rates will rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.)
- += Significant 0 = Insignificant

RISK CATEGORY	a	b	c	d	e	f
Health Insurance – other than LTC/LTD*	+	0	+	0	0	0
Health Insurance – LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium (dump-in premiums allowed)	0	+	+	+	+	+

\*LTC = Long-Term Care Insurance

\*LTD = Long-Term Disability Insurance

- (7) a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision (7)b. of this section)

either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Commissioner that legally segregates, by contract or contractual provisions, the underlying assets.

b. Notwithstanding the requirements of subdivision (7)a. of this section, the assets supporting the reserves for the following classes of business and any classes of business that do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation of those assets:

- Health Insurance – LTC/LTD
  - Traditional Non-Par Permanent
  - Traditional Par Permanent
  - Adjustable Premium Permanent
  - Indeterminate Premium Permanent
  - Universal Life Fixed Premium
- (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula that reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: I is the net investment income.

CG is capital gains less capital losses.

X is the current year cash and invested assets plus investment income due and accrued less borrowed money.

Y is the same as X but for the prior year.

- (8) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days after the settlement date.
- (9) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.
- (10) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.
- (11) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

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

- (d) (1) Reinsurance agreements entered into after October 1, 1993, that involve the reinsurance of business issued prior to the effective date of the reinsurance agreements, along with any subsequent amendments thereto, shall be filed by

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

- (2) Any increase in surplus net of federal income tax resulting from arrangements described in subdivision (d)(1) of this section shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance Ceded" line, page 4 of the Annual Statement as earnings emerge from the business reinsured.

(e) No reinsurance agreement or amendment to any reinsurance agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the Commissioner, unless the reinsurance agreement, amendment, or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

(f) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days after the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(g) The reinsurance agreement shall contain provisions that provide that:

- (1) The reinsurance agreement shall constitute the entire reinsurance agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the reinsurance agreement; and
- (2) Any change or modification to the reinsurance agreement shall be null and void unless made by amendment to the reinsurance agreement and signed by both parties.

(h) Insurers subject to this section shall reduce to zero by December 31, 1994, any reserve credits or assets established with respect to reinsurance agreements entered into prior to October 1, 1993, that, under the provisions of this section, would not be entitled to recognition of such reserve credits or assets; provided, however, that such reinsurance agreements shall have been in compliance with laws or regulations in existence immediately preceding October 1, 1993. (1993, c. 452, s. 4; 1993 (Reg. Sess., 1994), c. 678, s. 9; 1995, c. 193, ss. 15, 16; 2001-223, ss. 3.4, 3.5.)

**§ 58-7-32: Repealed by Session Laws 1993, c. 452, s. 65.**

**§ 58-7-33. Minimum policyholders' surplus to assume property or casualty reinsurance.**

(a) Notwithstanding any other provision of law, no domestic property or casualty insurer with less than ten million dollars (\$10,000,000) in policyholders' surplus may, without the

Commissioner's prior written approval, assume reinsurance on any risk that it is otherwise permitted to assume except where the reinsurance is:

- (1) Required by applicable law or regulation; or
- (2) Assumed under pooling arrangement among members of the same holding company system.

(b) This section applies to reinsurance contracts entered into or renewed on or after July 13, 1991.

(c) This section does not invalidate any reinsurance contract that was entered into before July 13, 1991, as between the parties to the contract. (1991, c. 681, s. 26.)

### **§ 58-7-35. Manner of creating such corporations.**

The procedure for organizing such corporations is as follows: The proposed incorporators, not less than 10 in number, a majority of whom must be residents of the State, shall subscribe articles of association setting forth their intention to form a corporation; its proposed name, which must not so closely resemble the name of an existing corporation doing business under the laws of this State as to be likely to mislead the public, and must be approved by the Commissioner; the class of insurance it proposes to transact and on what business plan or principle; the place of its location within the State, and if on the stock plan, the amount of its capital stock. The words "insurance company," "insurance association," or "insurance society" or "life" or "casualty" or "indemnity," or an acceptable alternative approved by the Commissioner, must be a part of the title of any such corporation. The certificate of incorporation must be subscribed and sworn to by the incorporators before an officer authorized to take acknowledgment of deeds, who shall forthwith certify the certificate of incorporation, as so made out and signed, to the Commissioner at his office in the City of Raleigh. The Commissioner shall examine the certificate, and if he approves of it and finds that the requirements of the law have been complied with, shall certify such facts, by certificate on such articles, to the Secretary of State. Upon the filing in the office of the Secretary of State of the certificate of incorporation and attached certificates, and the payment of a charter fee in the amount required for private corporations, and the same fees to the Secretary of State, the Secretary of State shall cause the certificate and accompanying certificates to be recorded in his office, and shall issue a certificate in the following form:

Be it known that, whereas (here the names of the subscribers to the articles of association shall be inserted) have associated themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the articles of association shall be inserted), with a capital (or with a permanent fund) of (here the amount of capital or permanent fund fixed in the articles of association shall be inserted), and have complied with the provisions of the statute of this State in such case made and provided, as appears from the following certified articles of association: (here copy articles of association and accompanying certificates). Now, therefore, I (here the name of the Secretary shall be inserted), Secretary of State, hereby certify that (here the names of the subscribers to the articles of association shall be inserted), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (here the name of the corporation shall be inserted), with such articles of association, and have all the powers, rights, and privileges and are subject to the duties, liabilities, and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the State of North Carolina hereunto affixed, this the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_ (in these blanks the day, month,

and year of execution of this certificate shall be inserted; and in the case of purely mutual companies, so much as relates to capital stock shall be omitted).

The Secretary of State shall sign the certificate and cause the seal of the State to be affixed to it, and such certificate of incorporation and certificate of the Secretary of State has the effect of a special charter and is conclusive evidence of the organization and establishment of the corporation. The Secretary of State shall also cause a record of his certificate to be made, and a certified copy of this record may be given in evidence with the same effect as the original certificate.

Subject to G.S. 58-8-5, any proposed change in the articles of incorporation shall be filed with the Commissioner, who shall examine the change. If the Commissioner approves the change, the Commissioner shall place a certificate of approval on the change, and forward it to the Secretary of State. (1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3; Rev., s. 4727; C.S., s. 6328; 1957, c. 98; 1987 (Reg. Sess., 1988), c. 975, s. 15; 1989, c. 485, s. 50; 1991, c. 720, ss. 4, 53; 1993, c. 504, s. 4.)

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

(a) Before a license is issued to a new domestic insurance company, each key person must furnish the Commissioner a complete set of the applicant's fingerprints. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant.

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

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

- (1) Any untrue material statement regarding the background or experience of any incorporator or other key person;
- (2) Violation of, or noncompliance with, any insurance laws, or of any rule or order of the Commissioner or of a commissioner of another state by any incorporator or other key person;
- (3) Obtaining or attempting to obtain the license through misrepresentation or fraud;
- (4) An incorporator or other key person has been convicted of a felony;
- (5) An incorporator or other key person has been found to have committed any unfair trade practice or fraud;
- (6) An incorporator or other key person has used fraudulent, coercive, or dishonest practices, or has acted in a manner that is incompetent, untrustworthy, or financially irresponsible; or
- (7) An incorporator or other key person has held such a position in another insurance company that has had its license suspended or revoked by any state.

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

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

(f) The Commissioner may adopt rules to set standards for obtaining background information on each incorporator or other key person of a proposed new domestic insurance company. (2001-223, s. 4.1; 2013-199, s. 2.)

#### **§ 58-7-40. First meeting; organization; license.**

The first meeting for the purpose of organization under such charter shall be called by a notice signed by one or more of the subscribers to the certificate of incorporation, stating the time, place, and purpose of the meeting; and at least seven days before the appointed time a copy of this notice shall be given to each subscriber, left at his usual place of business or residence, or duly mailed to his post-office address, unless the signers waive notice in writing. Whoever gives the notice must make affidavit thereof, which affidavit shall include a copy of the notice and be entered upon the records of the corporation. At the first meeting, or any adjournment thereof, an organization shall be effected by the choice of a temporary clerk, who shall be sworn; by the adoption of bylaws; and by the election of directors and such other officers as the bylaws require; but at this meeting no person may be elected director who has not signed the certificate of incorporation. The temporary clerk shall record the proceedings until the election and qualification of the secretary. The directors so chosen shall elect a president, secretary, and other officers which under the bylaws they are so authorized to choose. The president, secretary, and a majority of the directors shall forthwith make, sign, and swear to a certificate setting forth a copy of the certificate of incorporation, with the names of the subscribers thereto, the date of the first meeting and of any adjournments thereof, and shall submit such certificate and the records of the corporation to the Commissioner of Insurance, who shall examine the same, and who may require such other evidence as he deems necessary. If upon his examination the Commissioner of Insurance approves of the bylaws and finds that the requirements of the law have been complied with, he shall issue a license to the company to do business in the State, as is provided for in this Chapter. (1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3; Rev., s. 4728; C.S., s. 6329.)

#### **§ 58-7-45. Bylaws; classification and election of directors; amendments.**

(a) A domestic company may adopt bylaws for the conduct of its business that are not repugnant to law or its articles of incorporation and therein provide for the division of its board of directors into two, three, or four classes, and the election thereof at its annual meetings so that the members of one class only shall retire and their successors be chosen each year. Vacancies in any such class may be filled by election by the board for the unexpired term.

(b) Any change in the bylaws of a domestic company shall be promptly filed with the Commissioner. (1899, c. 54, s. 22; Rev., s. 4724; C.S., s. 6330; 1993, c. 504, s. 5.)

#### **§ 58-7-46. Notification to Commissioner for president or chief executive officer changes.**

All domestic insurers organized under the laws of this Chapter shall provide the Commissioner written notice of any change that occurs in the position of president or chief executive officer of the



insurer no later than 30 days after the change. Notice shall include the name of the insurer, the name of the person previously holding the position of president or chief executive officer, the name of the person currently holding the position, and the date the position change took place. (2005-215, s. 6.)

**§ 58-7-50. Maintenance and removal of records and assets.**

(a) Every domestic insurer shall maintain its home or principal office in this State and keep therein complete records of its assets, transactions, and affairs, specifically including:

- (1) Financial records;
- (2) Corporate records;
- (3) Reinsurance documents;
- (4) All accounting transactions;
- (5) Claim files; and
- (6) Payment of claims, in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(b) Every domestic insurer shall have and maintain its assets in this State, except as to:

- (1) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this State; and
- (2) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices, regional home offices, and operations offices, located outside this State as referred to in G.S. 58-7-55.

(c) The removal from this State of all or a part of the records or assets of a domestic insurer except pursuant to a plan of merger or consolidation approved by the Commissioner or for such reasonable purposes and periods of time as may be approved by the Commissioner in writing in advance of such removal, or concealment of such records or assets or part thereof from the Commissioner is prohibited. Any person who, without the prior approval of the Commissioner, removes or attempts to remove such records or assets or part thereof from the office or offices in which they are required to be kept and maintained under subsection (a) of this section or who conceals or attempts to conceal such records from the Commissioner, in violation of this subsection, shall be guilty of a Class I felony. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or part thereof outside this State, beyond the period therefor specified in the consent of the Commissioner under which consent the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the Commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of Article 30 of this Chapter.

(d) This section is subject to the exceptions provided in G.S. 58-7-55. The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State.

(e) Every domestic insurer that has its home or principal office in a location outside this State on October 1, 1993, shall petition the Commissioner for approval to continue to operate in that manner. The Commissioner, in determining whether to approve or disapprove the petition, shall consider the exceptions of G.S. 58-7-55, as well as any other factors that might affect the Commissioner's ability to regulate the insurer, or that might affect the insurer's ability to service or protect its policyholders. (1985 (Reg. Sess., 1986), c. 1013, s. 7; 1989, c. 452, s. 3; 1993, c. 452, s. 5; c. 539, s. 1270; 1994, Ex. Sess., c. 24, s. 14(c); 1998-212, s. 26B(a).)

**§ 58-7-55. Exceptions to requirements of G.S. 58-7-50.**

The provisions of G.S. 58-7-50 shall not be deemed to prohibit or prevent an insurer from:

- (1) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and reasonably necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the Commissioner at his request.
- (2) Having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside this State as required by other jurisdictions as a condition of transacting insurance in such jurisdictions reasonably and customarily required in the regular course of its business.
- (3) Establishing and maintaining its principal operations offices, its usual operations records, and such of its assets as may be necessary or convenient for the purpose, in another state in which the insurer is authorized to transact insurance in order that general administration of its affairs may be combined with that of an affiliated insurer or insurers, but subject to the following conditions:
  - a. That the Commissioner consents in writing to such removal of offices, records, and assets from this State upon evidence satisfactory to him that the same will facilitate and make more economical the operations of the insurer, and will not unreasonably diminish the service or protection thereafter to be given the insurer's policyholders in this State and elsewhere;
  - b. That the insurer will continue to maintain in this State its principal corporate office or place of business, and maintain therein available to the inspection of the Commissioner complete records of its corporate proceedings and a copy of each financial statement of the insurer current within the preceding five years, including a copy of each interim financial statement prepared for the information of the insurer's officers or directors;
  - c. That, upon the written request of the Commissioner, the insurer will with reasonable promptness produce at its principal corporate offices in this State for examination or for subpoena, its records or copies thereof relative to a particular transaction or transactions of the insurer as designated by the Commissioner in his request; and
  - d. That if at any time the Commissioner finds that the conditions justifying the maintenance of such offices, records, and assets outside of this State no longer exist, or that the insurer has willfully and knowingly violated any of the conditions stated in sub-subdivisions b. and c., the Commissioner may order the return of such offices, records, and assets to this State within such reasonable time, not less than six months, as may be specified in the order; and that for failure to comply with such order, as thereafter modified or extended, if any, the Commissioner shall suspend or revoke the insurer's license.

- (4) Placing its investment assets in one or more custodial accounts inside or outside of this State with banks, trust companies, or other similar institutions pursuant to custodial agreements approved by the Commissioner.
- (5) Permitting policyholder and certificate holder records and claims and other information to be kept and maintained by insurance producers, agents, general agents, third-party administrators, creditors, employers, associations, and others in the ordinary course of business in a manner customary or suitable to the kind or kinds of insurance transacted; provided, however, that the insurer shall, upon reasonable notice, make available to the Commissioner or his designee any records or other information permitted by this subsection to be maintained outside this State. (1985 (Reg. Sess., 1986), c. 1013, s. 7; 1999-132, s. 9.1; 2022-46, s. 14(p).)

**§ 58-7-60. Approval as a domestic insurer.**

Any insurer that is organized under the laws of any other state and is licensed to transact the business of insurance in this State may become a domestic insurer by (i) complying with laws and regulations regarding the organization and licensing of a domestic insurer of the same type; (ii) designating its principal place of business at a place in this State; and (iii) obtaining the approval of the Commissioner. Such domestic insurer shall be entitled to like certificates of authority to transact business in this State and shall be subject to the authority and jurisdiction of this State. Articles of Incorporation of such domestic insurer may be amended to provide that the corporation is a continuation of the corporate existence of the original foreign corporation through adoption of this State as its corporate domicile and that the original date of incorporation in its original domiciliary state is the date of incorporation of such domestic insurer. (1987, c. 752, s. 10.)

**§ 58-7-65. Conversion to foreign insurer.**

Any domestic insurer may, upon the approval of the Commissioner, transfer its domicile to any other state in which it is licensed to transact the business of insurance. Upon such a transfer such insurer shall cease to be a domestic insurer and shall be licensed in this State, if qualified, as a foreign insurer. The Commissioner shall approve any such proposed transfer unless he determines that such transfer is not in the interest of the policyholders of this State. (1987, c. 752, s. 10.)

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

The license, agent appointments and licenses, rates, and other items that the Commissioner authorizes or grants, in his discretion, that are in existence at the time any insurer licensed by the Commissioner transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method, shall continue in full force and effect upon the transfer if the insurer remains duly licensed by the Commissioner. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the insurer or its new location unless so ordered by the Commissioner. Every transferring insurer shall file new policy forms with the Commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the Commissioner: Provided, however, every such transferring insurer shall (i) notify the Commissioner of the details of the proposed transfer and (ii) promptly file any resulting amendments to corporate documents filed or required to be filed with the Commissioner. (1987, c. 752, s. 10; 1999-132, s. 9.1; 2000-140, s. 11; 2001-223, s. 4.2.)

**§ 58-7-73. Dissolutions of insurers.**

Upon reaching a determination of intent to dissolve and before filing articles of dissolution with the Office of the Secretary of State, a domestic insurer organized under this Chapter shall file a plan of dissolution for approval by the Commissioner. At such time the Commissioner may restrict the license of the insurer. In order to proceed with a dissolution, the plan must be approved by the Commissioner. (2002-187, s. 2.4.)

**§ 58-7-75. Amount of capital and/or surplus required; impairment of capital or surplus.**

The amount of capital and/or surplus requisite to the formation and organization of companies under the provisions of Articles 1 through 64 of this Chapter shall be as follows:

- (1) Stock Life Insurance Companies. – A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do the business of life insurance, only when it has paid-in capital of at least six hundred thousand dollars (\$600,000) and a paid-in initial surplus of at least nine hundred thousand dollars (\$900,000), and it may in addition do the kind of business specified in G.S. 58-7-15(2), without having additional capital or surplus. Every such company shall at all times thereafter maintain a minimum capital of not less than six hundred thousand dollars (\$600,000) and a minimum surplus of at least one hundred fifty thousand dollars (\$150,000). Provided that, any such corporation may do either or both of the kinds of insurance authorized for stock accident and health insurance companies, as set out in G.S. 58-7-15(3)a. and b., where its charter so permits, and only as long as it maintains a minimum capital and surplus equal to the sum of the minimum capital and surplus requirements of this subdivision and the minimum capital and surplus requirements of subdivision (2) of this section.
- (1a) Non-Stock Life Insurance Companies. – A nonstock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do the business of life insurance, only when it has a paid in initial surplus of at least one million five hundred thousand dollars (\$1,500,000) and it may in addition do the kind of business specified in G.S. 58-7-15(2), without having additional surplus. Every such corporation shall at all times thereafter maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000). Provided that, any such corporation may conduct the kind of insurance authorized for stock accident and health insurance companies, as set out in G.S. 58-7-15(3)a. and b., where its charter so permits, and only as long as it maintains a minimum surplus equal to the sum of the minimum surplus requirements of this subdivision and the minimum surplus requirements of subdivision (2a) of this section.
- (2) Stock Accident and Health Insurance Companies.
  - a. A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do only the kind of insurance specified in G.S. 58-7-15(3)a, when it has paid-in capital of not less than four hundred thousand dollars (\$400,000), and a paid-in initial surplus of at least six hundred thousand dollars (\$600,000). Every such company shall at all

times thereafter maintain a minimum capital of not less than four hundred thousand dollars (\$400,000) and a minimum surplus of at least one hundred thousand dollars (\$100,000).

- b. Any company organized under the provisions of paragraph a of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in G.S. 58-7-15(3)b, if it has a paid-in capital of at least six hundred thousand dollars (\$600,000) and a paid-in initial surplus of at least nine hundred thousand dollars (\$900,000). Every such company shall at all times maintain a minimum capital of not less than six hundred thousand dollars (\$600,000) and a minimum surplus of at least one hundred fifty thousand dollars (\$150,000).

(2a) Non-Stock Accident and Health Insurance Companies.

- a. A non-stock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do only the kind of insurance specified in G.S. 58-7-15(3)a. when it has a paid in initial surplus of at least one million dollars (\$1,000,000). Every such corporation shall at all times thereafter maintain a minimum surplus of at least five hundred thousand dollars (\$500,000).
- b. Any non-stock corporation organized under the provisions of sub-subdivision a. of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in G.S. 58-7-15(3)b., if it has a paid-in initial surplus of at least one million five hundred thousand dollars (\$1,500,000). Every such corporation shall at all times maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000).

(3) Stock Fire and Marine Companies. – A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in G.S. 58-7-15 (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) only when it has a paid-in capital of not less than eight hundred thousand dollars (\$800,000) and a paid-in initial surplus of not less than one million two hundred thousand dollars (\$1,200,000). Every such company shall at all times thereafter maintain a minimum capital of not less than eight hundred thousand dollars (\$800,000) and a minimum surplus of at least two hundred thousand dollars (\$200,000). Provided that, any such corporation may do all the kinds of insurance authorized for casualty, fidelity and surety companies, as set out in subdivision (4) of this section where its charter so permits, and when and so long as it meets and thereafter maintains a minimum capital and surplus equal to the sum of the minimum capital and surplus requirements of this subdivision and the minimum capital and surplus requirements of subdivision (4) of this section.

(4) Stock Casualty and Fidelity and Surety Companies. – A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in G.S. 58-7-15 (3), (6), (7), (8), (9),

(10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21), (22), and (23) only when it has a paid-in capital of not less than one million dollars (\$1,000,000) and a paid-in initial surplus of not less than one million five hundred thousand dollars (\$1,500,000). Every such company shall at all times thereafter maintain a minimum capital of not less than one million dollars (\$1,000,000) and a minimum surplus of at least two hundred fifty thousand dollars (\$250,000).

(5) Mutual Fire and Marine Companies.

- a. Limited assessment companies. – A limited assessment mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more kinds of insurance specified in G.S. 58-7-15 (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) only when it has no less than five hundred thousand dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus of at least three hundred thousand dollars (\$300,000), which surplus shall at all times be maintained. The assessment liability of a policyholder of a company organized in accordance with the provisions of this sub-subdivision shall not be limited to less than five annual premiums; provided, the limited assessment company may reduce the assessment liability of its policyholders from such five annual premiums to one additional annual premium when the free surplus of the company amounts to not less than three hundred thousand dollars (\$300,000), which surplus shall at all times be maintained.
- b. Assessable mutual companies. – An assessable mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in G.S. 58-7-15 (4), (5) and (6), with an unlimited assessment liability of its policyholders only when it has not less than five hundred thousand dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus equal to twice the amount of the maximum net retained liability under the largest policy of insurance issued by the company; but not less than sixty thousand dollars (\$60,000); which surplus shall at all times be maintained. Provided the company, when its charter so permits, in addition may be licensed to do one or more of the kinds of insurance specified in G.S. 58-7-15 (7), (8), (11), (12), (19), (20), (21) and (22), with an unlimited assessment liability of its policyholders, when its free surplus amounts to not less than sixty thousand dollars (\$60,000), which surplus shall at all times be maintained.
- c. Nonassessable mutual companies. – A nonassessable mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in G.S. 58-7-15 (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) and may be authorized to issue policies under the terms of which a policyholder is not liable for any assessments in addition to the premium set out in the policy only when it has not less than five hundred thousand dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed

with a paid-in initial surplus of not less than eight hundred thousand dollars (\$800,000), which surplus shall at all times be maintained.

- d. Town or county mutual insurance companies. – A town or county mutual insurance company with unlimited assessment liability may be organized in the manner prescribed in this Chapter and licensed to do the kinds of insurance specified in G.S. 58-7-15(4) only when it has not less than fifty thousand dollars (\$50,000) of insurance in force in not fewer than 50 separate risks subscribed with a paid-in initial surplus of not less than fifteen thousand dollars (\$15,000), which surplus shall at all times be maintained. A town or county mutual insurance company may, in addition to writing the business specified in G.S. 58-7-15(4) cover in the same policy the hazards usually insured against under an extended coverage endorsement when the company has not less than five hundred thousand dollars (\$500,000) of insurance in force in not fewer than 500 separate risks and maintains a surplus at all times of not less than one hundred twenty thousand dollars (\$120,000): Provided, that the company may not operate in more than six adjacent counties in this State. Any company authorized under this section before July 1, 1991, shall be permitted to continue to do the same kinds of business that it was authorized to do prior to July 1, 1991, without being required to increase its surplus; however, the insurer shall increase its surplus to the required amounts on or before July 1, 1992. The requirements of this sub-subdivision as to surplus shall apply to such companies as a prerequisite to writing additional lines of business, and to such companies as a prerequisite to commencing business if unlicensed prior to July 1, 1991.
- (6) Mutual Life, Accident and Health Insurance Companies. – A nonassessable mutual insurance company may be organized in the manner prescribed in this Chapter, and licensed to do only one or more of the kinds of insurance specified in G.S. 58-7-15 (1), (2) and (3) when it has complied with the requirements of this Chapter and with those set forth in sub-subdivisions a through d of this subdivision, inclusive, whichever shall be applicable.
- a. If organized to do only the kinds of insurance specified in G.S. 58-7-15 (1) and (2) the company shall have not less than 500 bona fide applications for life insurance in an aggregate amount not less than five hundred thousand dollars (\$500,000), and shall have received from each such applicant in cash the full amount of one annual premium on the policy for which the applicant applied, in an aggregate amount at least equal to ten thousand dollars (\$10,000), and shall in addition have a paid-in initial surplus of two hundred thousand dollars (\$200,000), and shall have and maintain at all times a minimum surplus of one hundred thousand dollars (\$100,000).
  - b. If organized to do only the kind of insurance specified in paragraph a of G.S. 58-7-15(3) the company shall have not less than 250 bona fide applications for that insurance, and shall have received from each applicant in cash the full amount of one annual premium on the policy

for which the applicant applied, in an aggregate amount of at least ten thousand dollars (\$10,000), and shall have a paid-in initial surplus of two hundred thousand dollars (\$200,000) and shall have and maintain at all times a minimum surplus of one hundred thousand dollars (\$100,000).

- c. If organized to do the kinds of insurance specified in G.S. 58-7-15 (1) and (3)a, the company shall have complied with the provisions of sub-subdivisions a and b of this subdivision.
  - d. If organized to do the kind of insurance specified in G.S. 58-7-15(3)b, in addition to the kind or kinds of insurance designated in any one of the preceding sub-subdivisions of this subdivision, the company shall have a paid-in initial surplus of at least five hundred thousand dollars (\$500,000) and shall maintain a minimum surplus of at least three hundred thousand dollars (\$300,000).
- (7) Organization of Mutual Casualty, Fidelity and Surety Companies.
- a. Nonassessable, mutual companies. – A mutual insurance company with no assessment liability provided for its policyholders may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in G.S. 58-7-15 (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) when it has a minimum paid-in initial surplus of one million dollars (\$1,000,000) and not less than five hundred thousand dollars (\$500,000) in insurance subscribed in not less than 500 separate risks. The surplus of the company shall at all times be maintained at or above that amount.
  - b. Assessable mutual companies. – A mutual insurance company with assessment liability provided for its policyholders may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in G.S. 58-7-15 (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) when it has a minimum paid-in initial surplus of four hundred thousand dollars (\$400,000) and not less than five hundred thousand dollars (\$500,000) of insurance subscribed in not less than 500 separate risks. The company shall at all times maintain a surplus in an amount not less than four hundred thousand dollars (\$400,000). The assessment liability of a policyholder of the company shall not be limited to less than one annual premium.
- (8) Organization of Mutual Multiple Line Companies.
- a. Assessable mutual companies. – A company may do all the kinds of insurance authorized to be done by a company organized under the provisions of sub-subdivision (5)a, and sub-subdivision (7)b of this subdivision, where its charter so permits when and if it meets the combined minimum requirements of those sub-subdivisions. The assessment liability of policyholders of such a company shall not be limited to less than one annual premium within any one policy year.
  - b. Nonassessable mutual companies. – A company may do all the kinds of insurance authorized to be done by a company organized under the



provisions of sub-subdivision (5)c, and sub-subdivision (7)a of this subdivision, where its charter so permits when and if it meets the combined minimum requirements of those paragraphs. The policyholders of such a company shall not be subject to any assessment liability.

- (9) Repealed by Session Laws 1991, c. 644, s. 32.
- (10) Impairment of Capital and/or Surplus. – Whenever the Commissioner finds from a financial statement made by any company, or from a report of examination of any company, that its admitted assets are less than the aggregate amount of its liabilities and its outstanding capital stock, required minimum surplus, or both, the Commissioner shall determine, in accordance with G.S. 58-2-165 and other applicable provisions of this Chapter, the amount of the impairment of capital, surplus, or both and issue an order in writing requiring the company to eliminate the impairment within such period of not more than 90 days as the Commissioner shall designate. The Commissioner may, by order served upon the company, prohibit the company from issuing any new policies while the impairment exists. If at the expiration of the designated period the company has not satisfied the Commissioner that the impairment has been eliminated, an order for the rehabilitation or liquidation of the company may be entered as provided in Article 30 of this Chapter.
- (11) The Commissioner may require an insurer to have and maintain a larger amount of capital or surplus than prescribed in this section, based upon the volume and kinds of insurance transacted by the insurer and on the principles of risk-based capital as determined by the NAIC or the Commissioner. (1899, c. 54, s. 26; 1903, c. 438, s. 4; Rev., s. 4729; 1907, c. 1000, s. 5; 1913, c. 140, s. 2; C.S., s. 6332; 1929, c. 284, s. 1; 1945, c. 386; 1947, c. 721; 1963, c. 943; 1965, c. 947; 1967, c. 300; 1971, c. 536; 1973, c. 686; 1979, c. 421, s. 1; 1983, c. 472; 1985, c. 666, s. 75; 1985 (Reg. Sess., 1986), c. 1013, s. 10; 1989, c. 485, s. 53; 1991, c. 644, s. 32; c. 681, s. 27; 1995, c. 193, s. 17; 2001-223, s. 5.1; 2007-127, s. 4; 2008-124, s. 2.6.)

**§ 58-7-80. Capital stock fully paid in cash.**

The capital stock shall be paid in cash within 12 months from the date of the charter or certificate of organization, and no certificate of full shares and no policies may be issued until the whole capital is paid in. A majority of the directors shall certify on oath that the money has been paid by the stockholders for their respective shares and is held as the capital of the company invested or to be invested as required by G.S. 58-7-75. (1899, c. 54, s. 27; Rev., s. 4730; C.S., s. 6333; 1945, c. 386.)

**§§ 58-7-85 through 58-7-90: Repealed by Session Laws 1991, c. 681, s. 30.**

**§ 58-7-95. Establishment of separate accounts by life insurance companies.**

(a) When used in this section, "variable contract" shall mean any individual or group contract issued by an insurance company providing for life insurance or annuity benefits or contractual payments or values which vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account or accounts in which amounts received or retained in connection with any of such contracts have been placed.

(b) Any domestic life insurance company may, pursuant to resolution of its board of directors, establish one or more separate accounts and may allocate to such account or accounts amounts (including without limitation proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance, guaranteed investment contracts, or annuities (and benefits incidental thereto) payable in fixed or variable amounts or both.

(c) In addition to the amounts allocated under subsection (b), such company may allocate from its general accounts to such separate account or accounts additional amounts, which may include an initial allocation to establish such account; provided, that such company shall be entitled to withdraw at any time, in whole or in part, its participation in any separate account to which funds have been allocated as provided in this subsection (c), and to receive, upon withdrawal, its proportionate share of the value of the assets of the separate account at the time of withdrawal.

(d) Except as hereinafter provided, the amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this State governing the investments of life insurance companies; provided, that to the extent that the company's reserve liability with regard to (i) benefits guaranteed as to amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be, except as the Commissioner may otherwise approve, invested in accordance with the laws of this State governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the company.

(e) Repealed by Session Laws 2001-223, s. 6.3, effective June 15, 2001.

(f) Repealed by Session Laws 2001-223, s. 6.3, effective June 15, 2001.

(g) The life insurance company shall maintain in each separate account assets with a value at least equal to the reserves and other contract liabilities with respect to the account, except as may otherwise be approved by the Commissioner.

(h) The income, if any, and gains and losses, realized or unrealized, from assets allocated to each account shall be credited to or charged against the account without regard to other income, gains or losses of the company.

(i) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the Commissioner that portion of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (d) hereof, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets. The reserve liability for variable contracts shall be determined in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(j) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(k) The life insurance company shall have the power and the company's charter shall be deemed amended to authorize such company to do all things necessary under any applicable state or federal law in order that variable contracts may be lawfully sold or offered for sale. To the extent such company deems it necessary to comply with any applicable federal or state laws, such

company, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide, for persons having an interest therein, appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account. This provision shall not affect existing laws pertaining to the voting rights of the life insurance company's policyholders.

(l) Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the company, and the company shall not be, or hold itself out to be, a trustee with respect to such amounts.

(m) The company shall not, in connection with the allocation of investments or expenses, or in any other respect, discriminate unfairly between separate accounts or between separate and other accounts, but this provision shall not require the company to follow uniform investment policies for its accounts.

(n) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (i) by a transfer of cash, or (ii) by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the Commissioner. The Commissioner may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

(o) Any contract providing benefits payable in variable amounts delivered or issued for delivery in this State shall contain a statement of the essential features of the procedure to be followed by the company in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

(p) Any variable annuity contract providing benefits payable in variable amounts issued under this section may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death or any other incidental amount approved by the Commissioner; such contracts will be deemed not to be contracts of life insurance and therefore not subject to the provisions of the insurance law governing life insurance contracts. Provision for any other benefit on death during the deferred period will be subject to such insurance provisions.

(q) No domestic life insurance company and no other life insurance company shall deliver or issue for delivery within this State any contracts under this section unless it is licensed or organized to do a life insurance or annuity business in this State, and the Commissioner is satisfied that its financial condition and its methods of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this State. In determining the qualification of a company requesting authority to deliver such contracts within this State, the Commissioner shall consider, among other things:

- (1) The history and financial condition of the company;
- (2) The character, responsibility and general fitness of the officers and directors of the company; and
- (3) The law and regulations under which the company is authorized in the state of domicile to issue variable annuity contracts. The state of entry of an alien company shall be deemed its place of domicile for this purpose.

If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the Commissioner to have met the provisions of this subsection if either it or the parent or affiliated company meets the requirements hereof.

(r) The Commissioner shall have sole and exclusive authority to regulate the issuance by life insurance companies and the sale of such contracts and to issue such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of this section, and such contracts and the life insurance companies which issue them shall not be subject to the Securities Law of North Carolina nor to the jurisdiction of the Secretary of State thereunder.

(s) Except for G.S. 58-58-61 and G.S. 58-58-120 in the case of a variable annuity contract, G.S. 58-58-55, 58-58-120, and 58-58-140(1) in the case of a variable life insurance policy, and except as otherwise provided in this section, all pertinent provisions of this Chapter apply to separate accounts and contracts issued in connection with separate accounts. Any individual variable life insurance contract, delivered or issued for delivery within this State, shall contain reinstatement and nonforfeiture provisions appropriate to that contract. Any group variable life insurance contract, delivered or issued for delivery within this State, shall contain grace provisions appropriate to that contract. Any individual variable annuity contract, delivered or issued for delivery within this State, shall contain reinstatement provisions appropriate to that contract. (1965, c. 166; 1969, c. 616, s. 2; 1971, c. 831, s. 2; 1973, c. 490; 1979, c. 409, s. 10; 1991, c. 720, s. 4; 1991 (Reg. Sess., 1992), c. 837, s. 7; 2001-223, ss. 6.1, 6.2, 6.3, 6.4; 2003-144, s. 3.)

**§ 58-7-100: Repealed by Session Laws 1991, c. 681, s. 30.**

**§ 58-7-105. Authority to increase or reduce capital stock.**

The Commissioner shall, upon application, examine the proceedings of domestic companies to increase or reduce their capital stock, and when found conformable to law shall issue certificates of authority to such companies to transact business upon such increased or reduced capital: Provided, that in no event shall the said capital stock be reduced to an amount less than that required upon organization of such company in G.S. 58-7-75. He shall not allow stockholders' obligations of any description as part of the assets or capital of any stock insurance company unless the same are secured by competent collateral. (1899, c. 54, s. 15; Rev., s. 4732; C.S., s. 6335; 1945, c. 386; 1991, c. 720, s. 4.)

**§ 58-7-110. Assessment of shares; revocation of license.**

When the net assets of a company organized under this Article do not amount to more than the amount required in G.S. 58-7-75 for its original capital, it may make good its capital to the original amount by assessment of its stock. Shares on which such an assessment is not paid within 60 days after demand shall be forfeitable and may be canceled by vote of the directors and new shares issued to make up the deficiency. If such company does not, within three months after notice from the Commissioner to that effect, make good its capital or reduce the same, as allowed by this

Article, its authority to transact new business of insurance shall be revoked by the Commissioner. (1899, c. 54, s. 28; 1903, c. 438, s. 4; Rev., s. 4733; C.S., s. 6336; 1945, c. 386; 1991, c. 720, s. 4.)

**§ 58-7-115. Increase of capital stock.**

Any company organized under the provisions of Articles 1 through 64 of this Chapter may issue pro rata to its stockholders certificates of any portion of its surplus which shall be considered an increase of its capital to the amount of such certificates. As used in this section, "surplus" means earned surplus; provided, however, issuance of certificates out of paid-in and contributed surplus will be permitted on a case-by-case basis, with the prior approval of the Commissioner. The issuance of those certificates shall not lower the total surplus of the insurer to an amount less than that required to be maintained by G.S. 58-7-75. The company may, at a meeting called for the purpose, vote to increase the amount and number of shares of its capital stock, and to issue certificates therefor when paid for in full. In whichever method the increase is made, the company shall, within 30 days after the issue of such certificates, submit to the Commissioner a certificate setting forth the amount of the increase and the facts of the transaction, signed and sworn to by its president and secretary and a majority of its directors. If the Commissioner finds that the facts conform to the law, he shall endorse his approval thereof; and upon filing such certificate so endorsed with the Secretary of State, and the payment of a fee of five dollars (\$5.00) for filing the same, the company may transact business upon the capital as increased, and the Commissioner shall issue his certificate to that effect. (1899, c. 54, s. 29; Rev., s. 4734; C.S., s. 6337; 1945, c. 386; 1991, c. 720, s. 4; 1993, c. 452, s. 6.)

**§ 58-7-120. Reduction of capital stock.**

When the capital stock of a company organized under this Article is impaired, the company may, upon a vote of the majority of the stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law, but no part of its assets and property shall be distributed to its stockholders. Within 10 days after such meeting the company must submit to the Commissioner a certificate setting forth the proceedings thereof and the amount of the reduction and the assets and liabilities of the company, signed and sworn to by its president, secretary, and a majority of its directors. The Commissioner shall examine the facts in the case, and if they conform to law, and in his judgment the proposed reduction may be made without prejudice to the public, he shall endorse his approval upon the certificate. Upon filing the certificate so endorsed with the Secretary of State and paying a filing fee of five dollars (\$5.00), the company may transact business upon the basis of the reduced capital as though it were original capital, and its charter shall be deemed to be amended to conform thereto, and the Commissioner shall issue his certificate to that effect. The company may, by a majority vote of its directors, after the reduction, require the return of the original certificates of stock held by each stockholder in exchange for new certificates it may issue in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original capital. (1899, c. 54, s. 30; Rev., s. 4735; C.S., s. 6338; 1991, c. 720, s. 4.)

**§ 58-7-125. Dividends not payable when capital stock impaired; liability of stockholders for unlawful dividends.**

No dividend shall be paid by any company incorporated in this State when its capital stock is impaired, or when such payment would have the effect of impairing its capital stock; and any

dividend so paid subjects the stockholders receiving it to a joint and several liability to the creditors of said company to the extent of the dividend so paid. (1899, c. 54, s. 31; 1903, c. 536, s. 3; Rev., s. 4736; C.S., s. 6339; 1945, c. 386.)

**§ 58-7-130. Dividends and distributions to stockholders.**

(a) Each domestic insurance company in North Carolina shall be restricted by the Commissioner from the payment of any dividends or other distributions to its stockholders whenever the Commissioner determines from examination of the company's financial condition that the payment of future dividends or other distributions would cause a hazardous financial condition, impair the financial soundness of the company or be detrimental to its policyholders, and those restrictions shall continue in force until the Commissioner specifically permits the payment of dividends or other distributions to stockholders by the company through a written authorization.

(b) A domestic stock insurance company shall not declare or pay dividends or other distributions to its stockholders from any source other than unassigned surplus without the Commissioner's prior written approval. For purposes of this section, "unassigned surplus" means an amount equal to the unassigned funds of a company as reflected in the company's most recent financial statement filed with the Commissioner under G.S. 58-2-165, including all or part of the surplus arising from unrealized capital gains or revaluation of assets.

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

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

(e) Dividends and other distributions paid to stockholders are subject to the requirements and limitations of G.S. 58-19-25(d) and G.S. 58-19-30(c). (1945, c. 386; 1991, c. 720, s. 9; 2001-223, s. 5.2; 2002-187, s. 2.5; 2006-105, s. 3.1.)

**§ 58-7-135: Repealed by Session Laws 1993, c. 452, s. 65.**

**§ 58-7-140. Certain officers debarred from commissions.**

No officer or other person whose duty it is to determine the character of the risk, and upon whose decision the application shall be accepted or rejected by an insurance company, shall receive as any part of his compensation a commission upon the premiums, but his compensation shall be a fixed salary and such share in the net profits as the directors may determine. Nor shall such officer or person be an employee of any officer or agent of the company. (1899, c. 54, s. 32; 1903, c. 438, s. 4; Rev., s. 4738; C.S., s. 6347; 1945, c. 386.)

**§ 58-7-145. Restrictions on purchase and sale of equity securities of domestic companies.**

(a) Statement of Ownership of Equity Securities. – Every person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company shall file in the office of the Commissioner on or before the first day of June, 1966, or within 10 days after he becomes such beneficial owner, director or officer, a statement, in such form as the Commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter if there has been a change in such ownership during such month, shall file in the office of the Commissioner a

statement, in such form as the Commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) Profit Made from Sale of Equity Security Held Less than Six Months. – For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within a period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any equity security of the company in the name and in behalf of the company, if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the equity security involved, or any transaction or transactions which the Commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

(c) Delivery of Security Sold. – It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within 20 days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) Sales by Dealers. – The provisions of subsection (b) shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The Commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) Arbitrage Transactions. – The provisions of subsections (a), (b) and (c) of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commissioner may adopt in order to carry out the purposes of this section.

(f) "Equity Security" Defined. – The term "equity security" when used in this section means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commissioner shall deem to be of similar

nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(g) Exemptions from Requirements of Section. – The provisions of subsections (a), (b) and (c) hereof shall not apply to equity securities of a domestic stock insurance company if

- (1) Such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if
- (2) Such domestic stock insurance company shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of subsections (a), (b) and (c) hereof except for the provisions of this subdivision (2).

(h) Rules and Regulations of Commissioner. – The Commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by subsections (a) through (g) hereof, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of subsections (a), (b) and (c) hereof imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(i) Severability. – If any part or provision of this section or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this section or the application thereof to other persons or circumstances. (1965, c. 127, s. 2.)

#### **§ 58-7-150. Consolidation.**

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

- (1) The plan of consolidation must be submitted to and be approved by the Commissioner before the consolidation.
- (2) The Commissioner shall not approve the plan unless the Commissioner finds that it is fair, equitable to policyholders, consistent with law, and will not conflict with the public interest. If the Commissioner disapproves the plan, the Commissioner shall state the reasons for the disapproval and call for a hearing.
- (3) No director, officer, member or subscriber of any such insurer, except as is expressly provided by the plan of consolidation, shall receive any fee, commission, other compensation or valuable consideration whatever, for in any manner aiding, promoting or assisting in the consolidation.
- (4) Any consolidation as to an incorporated domestic insurer shall in other respects be governed by the general laws of this State relating to business corporations. The consolidation of a domestic mutual insurer may be effected by vote of two thirds of the members voting thereon pursuant to such notice and procedure as the Commissioner may prescribe.

(b) Reinsurance of all or substantially all of the insurance obligations or risks of existing or in-force policies of a domestic insurer by another insurer under an assumption reinsurance



agreement, as defined in G.S. 58-10-25(a)(2), shall be deemed a consolidation for the purposes of this section. This section does not apply to consolidations to the extent regulated by Article 19 or other Articles of this Chapter.

(c) Repealed by Session Laws 2005-424, s. 1.3, effective January 1, 2006, and applicable to applications filed, licenses issued, and licenses continued on or after that date. (1947, c. 923; 1955, c. 905; 1985, c. 572, s. 4; 1989 (Reg. Sess., 1990), c. 1069, s. 10; 1993, c. 452, s. 7; 1993 (Reg. Sess., 1994), c. 678, s. 10; 1995, c. 193, s. 18; c. 507, s. 11A(c); 2001-223, ss. 7.1, 7.2; 2005-424, s. 1.3.)

**§ 58-7-155: Repealed by Session Laws 2005-424, s. 1.3, effective January 1, 2006, and applicable to applications filed, licenses issued, and licenses continued on or after that date.**

**§ 58-7-160. Investments unlawfully acquired.**

Whenever it appears by examination as authorized by law that a domestic insurer has acquired any assets in violation of the law in force on the date of the acquisition, the Commissioner shall disallow the amount of the assets, if wholly ineligible, or the amount of the value thereof in excess of any limitation prescribed by this Chapter and shall deduct that amount as a nonadmitted asset of the insurer. (1991, c. 681, s. 29.)

**§ 58-7-162. Allowable or admitted assets.**

In any determination of the financial condition of an insurer, there shall be allowed as assets only those assets owned by an insurer and that consist of:

- (1) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent United States bank, savings and loan association, credit union, or trust company, and the balance of any such deposit in an insolvent United States bank, savings and loan association, credit union, or trust company, to the extent insured by a federal agency.
- (2) Investments, securities, properties, and loans acquired or held in accordance with this Chapter.
- (3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.
- (4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.
- (5) Repealed by Session Laws 2003-212, s. 5, effective October 1, 2003.
- (6) All premiums in the course of collection not more than 90 days past due, excluding commissions payable thereon, due from any person that solely or in combination with the person's affiliates owes the insurer an amount that equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, but only if:
  - a. The premiums collected by the person or affiliates and not remitted to the insurer are held in a trust account with a bank or other depository approved by the Commissioner. The funds shall be held as trust funds and may not be commingled with any other funds of the person or affiliates. Disbursements from the trust account may be made only to the

insurer, the insured, or, for the purpose of returning premiums, a person that is entitled to returned premiums on behalf of the insured. A written copy of the trust agreement shall be filed with and approved by the Commissioner before becoming effective. The Commissioner shall disapprove any trust agreement filed under this sub-subdivision that does not assure the safety of the premiums collected. The investment income derived from the trust may be allocated as the parties consider to be proper. The person or affiliates shall deposit premiums collected into the trust account within 15 business days after collection; or

- b. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, an unexpired, clean, irrevocable letter of credit, payable to the insurer, issued for a term of no less than one year and in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during the period that the letter of credit is in effect, for premiums collected by the person or affiliates. The letter of credit shall be issued under arrangements satisfactory to the Commissioner and the letter shall be issued by a banking institution that is a member of the Federal Reserve System and that has a financial standing satisfactory to the Commissioner; or
- c. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, evidence that the person or affiliates have purchased and have currently in effect a financial guaranty bond, payable to the insurer, issued for a term of not less than one year and that is in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during which the financial guaranty bond is in effect, for the premiums collected by the person or persons. The financial guaranty bond shall be issued under an arrangement satisfactory to the Commissioner and the financial guaranty bond shall be issued by an insurer that is authorized to transact that business in this State, that has a financial standing satisfactory to the Commissioner, and that is neither controlled nor controlling in relation to either the insurer or the person or affiliates for whom the bond is purchased.

Premiums receivable under this subdivision will not be allowed as an admitted asset if a financial evaluation by the Commissioner indicates that the person or affiliates are unlikely to be able to pay the premiums as they become due. The financial evaluation shall be based on a review of the books and records of the controlling or controlled person.

- (7) Repealed by Session Laws 2003-212, s. 5, effective October 1, 2003.
- (8) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves carried thereon.
- (9) The full amount of reinsurance which is recoverable by a ceding insurer from a solvent reinsurer and is authorized under G.S. 58-7-21.

- (10) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.
- (11) Deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds, or from any suspended banking institution, to the extent considered by the Commissioner to be available for the payment of losses and claims and at values to be determined by the Commissioner.
- (12) Electronic and mechanical machines, including operating and system software constituting a management information system.
- (13) Other assets, not inconsistent with the provisions of this section, considered by the Commissioner to be available for the payment of losses and claims, at values to be determined by the Commissioner. (1991, c. 681, s. 29; 1993, c. 452, s. 8; 1995 (Reg. Sess., 1996), c. 659, s. 1; 2003-212, ss. 4-6; 2011-221, s. 4.)

**§ 58-7-163. Assets not allowed.**

In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

- (1) Repealed by Session Laws 2003-212, s. 7, effective October 1, 2003.
- (2) Advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents, and other persons on personal security only.
- (3) Stock of the insurer or any material equity therein or loans secured thereby, or any material proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation, or business unit.
- (4) Repealed by Session Laws 2003-212, s. 7, effective October 1, 2003.
- (5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value of the investments as determined under this Chapter.
- (6) Bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default, to the extent of the cost or carrying value that is in excess of the value as determined pursuant to other provisions of this Chapter.
- (7) Repealed by Session Laws 2003-212, s. 7, effective October 1, 2003.
- (8) Certificates of contribution, surplus notes, or other similar evidences of indebtedness, to the extent that admission of these investments results in the double counting of these investments in the reporting entity's balance sheet.
- (9) Any asset that is encumbered in any manner unless the asset is authorized under G.S. 58-7-187 or G.S. 58-7-162(13); provided that an asset that is used as collateral to secure access to advances from a federal home loan bank, as defined by G.S. 58-30-10(9a), shall not be disallowed under the provisions of this section. (1991, c. 681, s. 29; 1993, c. 452, s. 9; 1993 (Reg. Sess., 1994), c. 678, s. 11; 2003-212, s. 7; 2017-164, s. 2; 2018-120, s. 4.1.)

**§ 58-7-165. Eligible investments.**

(a) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in this Chapter.

(b) Any particular investment held by an insurer on December 31, 1991, that was a legal investment when it was made, and that the insurer was legally entitled to possess immediately before January 1, 1992, is an eligible investment.

(c) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated otherwise in this Chapter.

(d) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to those assets or funds shown by the insurer's annual statement as of the December 31 preceding the date of acquisition of the investment by the insurer, or, if applicable, as shown by the most current quarterly financial statement filed by the insurer. (1991, c. 681, s. 29.)

#### **§ 58-7-167. General qualifications.**

(a) No security or investment, other than real or personal property acquired under G.S. 58-7-187, is eligible for acquisition unless it is interest-bearing or interest-accruing, is entitled to receive dividends if and when declared and paid, or is otherwise income-producing, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

(b) No security or investment shall be eligible for purchase at a price above its market value unless it is approved by the Commissioner and is valued in accordance with valuation procedures of the NAIC that have been adopted by the Commissioner.

(c) This Chapter does not prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend, as a lawful distribution of assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired that is not otherwise eligible under this Chapter shall be disposed of under G.S. 58-7-188 if the investment is in property or securities. (1991, c. 681, s. 29.)

#### **§ 58-7-168. Authorization of investment.**

An insurer shall not make any investment or loan, other than a policy loan or annuity contract loan of a life insurer, unless the investment or loan is authorized or approved by the insurer's board of directors or by a committee authorized by the board and charged with the supervision or making of the investment or loan. The minutes of any such committee shall be recorded and regular reports of the committee shall be submitted to the board of directors. (1991, c. 681, s. 29.)

#### **§ 58-7-170. Diversification.**

(a) Every insurer must maintain an amount equal to its entire policyholder-related liabilities and the minimum capital and surplus required to be maintained by the insurer under this Chapter invested in coin or currency of the United States and in investments authorized under this Chapter, other than the investments authorized under G.S. 58-7-183 or G.S. 58-7-187, except G.S. 58-7-187(b)(1).

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

- (1) The cost of investments made by insurers in stock authorized by G.S. 58-7-173 shall not exceed twenty-five percent (25%) of the insurer's admitted assets,

provided that no more than twenty percent (20%) of the insurer's admitted assets shall be invested in common stock; and the cost of an investment in stock of any one corporation shall not exceed three percent (3%) of the insurer's admitted assets. Notwithstanding any other provision in this Chapter, the financial statement carrying value of all stock investments shall be used for the purpose of determining the asset value against which the percentage limitations are to be applied. Investments in the voting securities of a depository institution, or any company that controls a depository institution, shall not exceed five percent (5%) of the insurer's admitted assets. As used in this subdivision, "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813; and includes any foreign bank that maintains a branch, an agency, or a commercial lending company in the United States.

- (2) The cost of Canadian investments authorized by G.S. 58-7-173 shall not exceed forty percent (40%) of the insurer's admitted assets in the aggregate, provided that no more than twenty-five percent (25%) of the insurer's admitted assets shall be invested in Canadian investments authorized by G.S. 58-7-173(11).

(c) The cost of investments made by an insurer in mortgage loans authorized by G.S. 58-7-179 with any one person, or in mortgage-backed securities authorized by G.S. 58-7-173(1), (2), (8), or (17), and backed by a single collateral pool, shall not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not invest in additional mortgage loans or mortgage-backed securities without the Commissioner's consent if the admitted value of all those investments held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer. Within the aggregate sixty percent (60%) limitation, the admitted value of all mortgage-backed securities permitted by G.S. 58-7-173(17) shall not exceed thirty-five percent (35%) of the admitted assets of the insurer. The admitted value of other mortgage loans permitted by G.S. 58-7-179 shall not exceed forty percent (40%) of the admitted assets of the insurer. Mortgage-backed securities authorized by G.S. 58-7-173(1), (2), or (8) shall only be subject to the single collateral pool limitation and the sixty percent (60%) aggregate limitation. No later than January 31, 1999, an insurer that has mortgage investments that exceed the limitations specified in this subsection shall submit to the Commissioner a plan to bring the amount of mortgage investments into compliance with the specified limitations by January 1, 2004.

(d) Without the Commissioner's prior written approval, the cost of investments permitted under G.S. 58-7-173 and G.S. 58-7-178, and that are classified as medium to lower quality obligations shall be limited to:

- (1) No more than twenty percent (20%) of an insurer's admitted assets;
  - (2) No more than ten percent (10%) of an insurer's admitted assets in obligations designated a 4, 5, or 6 in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office;
  - (3) No more than three percent (3%) of an insurer's admitted assets in obligations designated a 5 or 6 in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office; and
  - (4) No more than one percent (1%) of an insurer's admitted assets in obligations designated a 6 in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office.
- (5),(6) Repealed by Session Laws 1993, c. 452, s. 11.

(e) As used in subsections (d), (f), (g), and (h) of this section, "medium to lower quality obligations" means obligations designated a 3, 4, 5, or 6 in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office.

(f) Each insurer shall possess and maintain adequate documentation to establish that its investments in medium to lower quality obligations do not exceed the limitations under subsection (d) of this section.

(g), (h) Repealed by Session Laws 2005-215, s. 7, effective July 20, 2005.

(i) Failure to obtain the Commissioner's prior written approval shall result in any investments in excess of those permitted by subsection (d) of this section not being allowed as an asset of the insurer.

(j) The Commissioner may limit the extent of an insurer's deposits with any financial institution if the Commissioner determines that the financial solvency of the insurer is threatened by a deposit in excess of insured limits.

(k) The provisions of this section supersede any inconsistent provision of section 106 of the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. § 77r-1, to the extent permitted by that Act. (1991, c. 681, s. 29; 1993, c. 452, ss. 10-13; c. 504, s. 43; 1993 (Reg. Sess., 1994), c. 678, s. 12; 1998-212, s. 26B(i); 2001-215, s. 3; 2001-223, ss. 8.1, 8.2; 2005-215, s. 7; 2022-46, s. 2(a).)

#### **§ 58-7-172. Cash and deposits.**

An insurer may have funds in coin or currency of the United States on hand or on deposit in any solvent national or state bank, savings and loan association, credit union, or trust company. (1991, c. 681, s. 29; 2011-221, s. 5.)

#### **§ 58-7-173. Permitted insurer investments.**

An insurer may invest in:

- (1) Bonds, notes, warrants, and other evidences of indebtedness that are direct obligations of the U.S. Government or for which the full faith and credit of the U.S. Government is pledged for the payment of principal and interest.
- (2) Loans insured or guaranteed as to principal and interest by the U.S. Government or by any agency or instrumentality of the U.S. Government to the extent of the insurance or guaranty.
- (3) Student loans insured or guaranteed as to principal by the U.S. Government or by any agency or instrumentality of the U.S. Government to the extent of the insurance or guaranty.
- (4) Bonds, notes, warrants, and other securities not in default that are the direct obligations of any state or United States territory or the government of Canada or any Canadian province, or for which the full faith and credit of such state, government, or province has been pledged for the payment of principal and interest.
- (5) Bonds, notes, warrants, and other securities not in default of any county, district, incorporated city, or school district in any state of the United States, or the District of Columbia, or in any Canadian province, that are the direct obligations of the county, district, city, or school district and for payment of the principal and interest of which the county, district, city, or school district has lawful authority to levy taxes or make assessments.

- (6) Bonds, notes, certificates of indebtedness, warranties, or other evidences of indebtedness that are payable from revenues or earnings specifically pledged therefor of any public toll bridge, structure, or improvement owned by any state, incorporated city, or legally constituted public corporation or commission, all within the United States or Canada, for the payment of the principal and interest of which a lawful sinking fund has been established and is being maintained and if no default by the issuer in payment of principal or interest has occurred on any of its bonds, notes, warrants, or other securities within five years prior to the date of investment therein.
- (7) Bonds, notes, certificates of indebtedness, warrants, or other evidences of indebtedness that are valid obligations issued, assumed, or guaranteed by the United States, any state, any county, city, district, political subdivision, civil division, or public instrumentality of any such government or unit thereof, or in any province of Canada; if by statute or other legal requirements the obligations are payable as to both principal and interest from revenues or earnings from the whole or any part of any utility supplying water, gas, a sewage disposal facility, electricity, or any other public service, including but not limited to a toll road or toll bridge.
- (8) Bonds, debentures, or other securities of the following agencies, whether or not those obligations are guaranteed by the U.S. Government:
  - a. Fannie Mae, and stock thereof when acquired in connection with the sale of mortgage loans to the Association.
  - b. Any federal land bank, when the securities are issued under the Farm Loan Act;
  - c. Any federal home loan bank, when the securities are issued under the Home Loan Bank Act;
  - d. The Home Owners' Loan Corporation, created by the Home Owners' Loan Act of 1933;
  - e. Any federal intermediate credit bank, created by the Agricultural Credits Act;
  - f. The Central Bank for Cooperatives and regional banks for cooperatives organized under the Farm Credit Act of 1933, or by any of such banks; and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions under the Farm Credit Act of 1971;
  - g. Any other similar agency of the U.S. Government that is of similar financial quality.
- (9) Bonds, debentures, or other securities of public housing authorities, issued under the Housing Act, of 1949, the Municipal Housing Commission Act, or the Rural Housing Commission Act, or issued by any public housing authority or agency in the United States, if the bonds, debentures, or other securities are secured by a pledge of annual contributions to be paid by the United States or any United States agency.
- (10) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, or the

African Development Bank; and the cost of investments made under this subdivision in any one institution shall not exceed three percent (3%) of the insurer admitted assets.

- (11) Bonds, notes, or other interest-bearing or interest-accruing obligations of any solvent institution organized under the laws of the United States, of any state, Canada or any Canadian province; provided the instruments are designated and valued in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office. The cost of investments made under this subdivision in any one issuer shall not exceed three percent (3%) of an insurer's admitted assets.
- (12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed three percent (3%) of the insurer's admitted assets.
- (13) Equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, and the right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of that transportation equipment; and the cost of investments made under this subdivision shall not exceed twenty percent (20%) of the insurer's admitted assets.
- (14) Share or savings accounts of credit unions, savings and loan associations or building and loan associations.
- (15) Loans with a maturity not in excess of 12 years from the date thereof that are secured by the pledge of securities eligible for investment under this Chapter or by the pledge or assignment of life insurance policies issued by other insurers authorized to transact insurance in this State. On the date made, no such loan shall exceed in amount seventy-five percent (75%) of the market value of the collateral pledged, except that loans upon the pledge of U.S. Government bonds and loans upon the pledge or assignment of life insurance policies shall not exceed ninety-five percent (95%) of the market value of the bonds or the cash surrender value of the policies pledged. The market value of the collateral pledge shall at all times during the continuance of the loans meet or exceed the minimum percentages herein. Loans made under this section shall not be renewable beyond a period of 12 years from the date of the loan.
- (16) Stocks, common or preferred, of any corporation created or existing under the laws of the United States, any U.S. territory, Canada or any Canadian province, or of any state. An insurer may invest in stocks, common or preferred, of any corporation created or existing under the laws of any foreign country other than Canada subject to the provisions of G.S. 58-7-178.
- (17) Mortgage-backed securities that are designated a 1 or 2 in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office including, without limitation, collateral mortgage obligations backed by a pool of mortgages of the kind, class, and investment quality as those eligible for investment under G.S. 58-7-179. (1991, c. 681, s. 29; 1993, c. 105, s. 1; c. 452, s. 14; c. 504, s. 44; 2001-223, ss. 8.3, 8.4, 8.5, 8.6, 8.7, 8.8; 2001-487, s. 14(g); 2005-215, ss. 8, 9; 2011-221, s. 6.)



**§ 58-7-175. Policy loans.**

A life insurer may lend to its policyholder, upon pledge of the policy as collateral security, any sum not exceeding the cash loan value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, as long as the loan is adequately secured by the pledge or assignment. Loans so made are eligible investments of the insurer. (1991, c. 681, s. 29.)

**§ 58-7-177: Repealed by Session Laws 2001-223, s. 8.9.**

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

(a) An insurer authorized to transact insurance in a foreign country or any U.S. territory may have funds invested in securities that may be required for that authority and for the transaction of that business, provided the funds and securities are substantially of the same kinds, classes, and investment grades as those otherwise eligible for investment under this Chapter. The aggregate amount of investments under this subsection shall not exceed the amount that the insurer is required by law to invest in the foreign country or United States territory, or one and one-half times the amount of reserves and other obligations under the contracts, whichever is greater.

(b) An insurer, whether or not it is authorized to do business or has outstanding insurance contracts on lives or risks in any foreign country, may invest in bonds, notes, or stocks of any foreign country or alien corporation that are substantially of the same kinds, classes, and investment grades as those otherwise eligible for investment under this Chapter. The aggregate cost of investments under this subsection shall not exceed ten percent (10%) of the insurer's admitted assets, provided that the cost of investments in any one foreign country under this subsection shall not exceed three percent (3%) of the insurer's admitted assets.

(c) Canadian securities eligible for investment under other provisions of this Chapter are not subject to this section. (1991, c. 681, s. 29; 2001-223, s. 8.11; 2001-487, s. 103(b); 2002-187, s. 2.6; 2005-215, s. 10.)

**§ 58-7-179. Mortgage loans.**

(a) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness that are secured by first mortgages or deeds of trust upon improved real property located in the United States, any U.S. territory, or Canada, or that are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 30 years, inclusive of the terms that may be provided by enforceable options of renewal, as long as the loan matures at least 20 years before the expiration of such lease, in improved real property located in the United States, any U.S. territory, or Canada. In all cases the security for the loan must be a first lien upon the real property, and there must not be any condition or right of reentry or forfeiture not insured against under which, in the case of real property other than leaseholds, the lien can be cut off or subordinated or otherwise disturbed, or under which, in the case of leaseholds, the insurer cannot continue the lease in force for the duration of the loan. Nothing herein prohibits any investment because of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section does not prohibit investment in mortgages or similar obligations when made under G.S. 58-7-180.

(b) "Improved real property" means all farmlands used for tillage, crops, or pasture; timberlands; and all real property on which permanent improvements, and improvements under

construction or in process of construction, suitable for residential, institutional, commercial, or industrial use are situated.

(c) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts, as applicable:

- (1) Ninety-five percent (95%) of the value of the real property or leasehold securing the real property in the case of a mortgage on a dwelling primarily intended for occupancy by not more than four families if they insure down to eighty percent (80%) with a licensed mortgage insurance company, or eighty percent (80%) of the value in the case of other real estate mortgages;
- (2) The amount of any insurance or guaranty of the loan by the United States or by an agency or instrumentality thereof; or
- (3) The percentage-of-value limit on the amount of the loan applicable under subdivision (1) of this subsection, plus the amount by which the excess of the loan over the percentage-of-value limit is insured or guaranteed by the United States or by any agency or instrumentality thereof.

(d) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount lent or invested shall not exceed the unpaid part of the purchase price.

(e) Nothing in this section prohibits an insurer from renewing or extending a loan for the original or a lesser amount where a shrinkage in value of the real estate securing the loan would cause its value to be less than the amount otherwise required in relation to the amount of the loan. (1991, c. 681, s. 29; 2003-212, s. 11; 2018-120, s. 4.2.)

#### **§ 58-7-180. Chattel mortgages.**

(a) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, where the mortgage loan was acquired under G.S. 58-7-179, an insurer may lend or invest an amount not exceeding twenty percent (20%) of the amount lent on or invested in such real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments with a term of not more than five years, and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(b) For the purposes of this section, the term "durable equipment" includes only mechanical refrigerators, air-conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in addition, in the case of apartment houses and hotels, room furniture and furnishings.

(c) Before the acquisition of a chattel mortgage under this section, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(d) This section does not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this Chapter. (1991, c. 681, s. 29.)

#### **§ 58-7-182. Special investments by title insurers.**

In addition to other investments eligible under this Chapter, a title insurer may invest and have invested an amount not exceeding the greater of three hundred thousand dollars (\$300,000) or fifty

percent (50%) of that part of its policyholders' surplus that exceeds the minimum surplus required by G.S. 58-7-75 in its abstract plant and equipment, in loans secured by mortgages on abstract plants and equipment, and, with the Commissioner's consent, in stocks of abstract companies. (1991, c. 681, s. 29.)

**§ 58-7-183. Special consent investments.**

(a) After satisfying the requirements of this Chapter, any funds of an insurer in excess of its reserves and policyholders' surplus required to be maintained may be invested:

- (1) Without limitation in any investments otherwise authorized by this Chapter; or
- (2) In such other investments not specifically authorized by this Chapter as long as any single interest investment does not exceed two percent (2%) of admitted assets and the aggregate of the investments does not exceed the lesser of five percent (5%) of the insurer's total admitted assets or sixty percent (60%) of the amount by which the insurer's policyholders' surplus exceeds the minimum required to be maintained.

The limitations in subdivision (2) of this subsection may be exceeded if approved in writing by the Commissioner.

(b) In no case shall the investments authorized under this section being held by an insurer be greater than the amount by which the insurer's policyholders' surplus exceeds the minimum required to be maintained.

(c) Notwithstanding the provisions of this section, an insurer may not invest in investments prohibited by this Chapter. (1991, c. 681, s. 29; 1993, c. 452, s. 14.1, c. 504, s. 6.)

**§ 58-7-185. Prohibited investments and investment underwriting.**

(a) In addition to investments excluded under other provisions of this Chapter, except with prior approval by the Commissioner, an insurer shall not directly or indirectly invest in or lend its funds upon the security of:

- (1) Issued shares of its own capital stock, except in connection with a plan for purchase of the shares by the insurer's officers, employees, or agents. No such stock shall, however, constitute an asset of the insurer in any determination of its financial condition.
- (2) Except with the Commissioner's consent, securities issued by any corporation or enterprise, the controlling interest of which is or will after acquisition by the insurer be held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under G.S. 58-19-10 are not subject to this provision.
- (3) Repealed by Session Laws 2001-223, s. 8.13.

(b) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person. (1991, c. 681, s. 29; 2001-223, ss. 8.12, 8.13.)

**§ 58-7-187. Real estate, in general.**

(a) An insurer shall not directly or indirectly acquire or hold real estate except as authorized in this section.

(b) An insurer may acquire and hold:

- (1) Land and buildings thereon used or acquired for use as its principal home office and branch offices, or used in conjunction with such offices, for the convenient transaction of its own business.
  - (2) Real property acquired in satisfaction in whole or in part of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer, in the course of its business.
  - (3) Real property acquired in part payment of the consideration on the sale of other real property owned by it, if the transaction effects a net reduction in the insurer's investment in real estate.
  - (4) Real property acquired by gift or devise or through merger, consolidation, or bulk reinsurance of another insurer under this Chapter.
  - (5) Additional real property and equipment incident to real property, if necessary or convenient for the enhancement of the marketability or sale value of real property previously acquired or held by it under subdivisions (2) through (4) of this subsection.
- (c) An insurer may acquire and hold real property for investment, subject to the following conditions:
- (1) The amount shall not exceed in the aggregate the lesser of five percent (5%) of the insurer's admitted assets or fifteen percent (15%) of the insurer's capital and surplus.
  - (2) The amount in any one property shall not exceed one percent (1%) of the insurer's admitted assets.
  - (3) The amount in unimproved land shall not exceed one-half of one percent (0.5%) of the insurer's admitted assets.
  - (4) There shall be no time limit for the disposal of investment real estate.
- (d) The amount in real property acquired and held by an insurer shall not exceed fifteen percent (15%) of the insurer's admitted assets; but the Commissioner may permit an insurer to invest in real property in such increased amount as the Commissioner considers to be proper. (1991, c. 681, s. 29.)

**§ 58-7-188. Time limit for disposal of ineligible property and securities; effect of failure to dispose.**

(a) Any property or securities lawfully acquired by an insurer that it could not otherwise have invested in or lent its funds upon at the time of the acquisition shall be disposed of within three years from the date of acquisition, unless within that period the security has attained to the standard of eligibility; except that any security or property acquired under any agreement of bulk reinsurance, merger, or consolidation may be retained for a longer period if so provided in the plan for the reinsurance, merger, or consolidation as approved by the Commissioner under this Chapter. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the insurer's interests, the Commissioner may extend the disposal period for an additional reasonable time.

(b) Any property or securities lawfully acquired and held by an insurer after expiration of the period for their disposal or any extension of the period granted by the Commissioner shall not be allowed as an asset of the insurer. (1991, c. 681, s. 29.)

**§ 58-7-190: Repealed by Session Laws 1993, c. 452, s. 65.**

**§ 58-7-192. Valuation of securities and investments.**

(a) through (c) Repealed by Session Laws 2003-212, s. 8, effective October 1, 2003.

(d) No valuations shall be greater than any applicable valuation or method contained in the latest edition of the NAIC publications entitled "Purposes and Procedures Manual of the NAIC Securities Valuation Office" or the "Accounting Practices and Procedures Manual", unless the Commissioner determines that another valuation method is appropriate when it results in a more conservative valuation.

(e) Repealed by Session Laws 2003-212, s. 8, effective October 1, 2003. (1991, c. 681, s. 29; 1993, c. 452, ss. 15, 16; 2001-223, s. 8.14; 2003-212, s. 8.)

**§ 58-7-193. Valuation of property.**

(a), (b) Repealed by Session Laws 2003-212, s. 9, effective October 1, 2003.

(c) Personal property acquired pursuant to chattel mortgages made in accordance with G.S. 58-7-180 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, or the fair market value of the property, whichever amount is less.

(d) If the Commissioner and an insurer do not agree on the value of real or personal property of an insurer, in carrying out the Commissioner's responsibilities under this section, the Commissioner may retain the services of a qualified real or personal property appraiser. The insurer shall reimburse the Commissioner for the costs of the services of any appraiser incurred with respect to the Commissioner's responsibilities under this section. (1991, c. 681, s. 29; 2003-212, s. 9.)

**§ 58-7-195: Repealed by Session Laws 2003-212, s. 10, effective October 1, 2003.**

**§ 58-7-197. Replacing certain assets; reporting certain liabilities.**

(a) The Commissioner, upon determining that an insurer's asset has not been valued according to this Chapter or that it does not qualify as an asset, shall require the insurer to properly revalue an improperly valued asset or replace a nonadmitted asset with an asset suitable to the Commissioner within 90 days after the determination.

(b) The Commissioner, upon determining that an insurer has failed to report certain liabilities that should have been reported, shall require that the insurer report those liabilities to the Commissioner within 90 days after notice to the insurer.

(c) When the Commissioner determines that an admitted asset held by any insurer is of doubtful value or is without ascertainable value on a public exchange, unless the insurer establishes a value by placing the asset upon the market and obtaining a bona fide offer for the asset, the Commissioner may have the asset appraised, and the appraisal shall be the true value of the asset. No asset may be carried in an insurer's financial statement under G.S. 58-2-165 at an appraised value established by the insurer unless the Commissioner's prior written approval is obtained.

(d) When any admitted asset defaults as to principal or in the payment of interest or dividends after it has been purchased by an insurer, the asset shall subsequently be carried at its market value or, after notice and opportunity for hearing, at a value determined by the Commissioner.

(e) Whenever it appears to the Commissioner that an insurer has acquired any asset in violation of this Chapter, the Commissioner shall disallow, in whole or in part, the amount of the

asset that is prohibited by this Chapter. In any determination of the financial position of the insurer, that amount shall be deducted as a nonadmitted asset of the insurer. (1991, c. 681, s. 29.)

**§ 58-7-198. Assets of foreign or alien insurers.**

The Commissioner may refuse a new or renewal license to any foreign or alien insurer upon finding that its assets do not comply in substance with the investment requirements and limitations imposed by this Chapter upon like domestic insurers whenever authorized to do the same kinds of insurance business. (1991, c. 681, s. 29.)

**§ 58-7-200. Investment transactions.**

(a) The transactions specified in subsections (b) through (e) of this section are expressly allowed or prohibited as provided in this section and to the extent they are not in conflict with other provisions of this Chapter.

(b) An insurer may engage in derivative transactions under the provisions and limitations of G.S. 58-7-205.

(c) No insurer shall directly or indirectly invest in, or lend its funds to, any of its directors, officers, controlling stockholders, or any other person in which an officer, director, or controlling stockholder is substantially interested, nor shall any director, officer, or controlling stockholder directly or indirectly accept the funds.

(d) No director, officer, or controlling stockholder of any insurer shall receive any money or valuable thing, either directly or indirectly or through any substantial interest in any other person, for negotiating, procuring, recommending, or aiding in any purchase or sale of property or loan from the insurer; or be monetarily interested either as principal, corporation, agent, or beneficiary, in any such purchase, sale, or loan; and no financial obligation of any such director, officer, or stockholder shall be guaranteed by the insurer. "Substantial interest in any other person" means an interest equivalent to ownership or control by a director, officer, or controlling stockholder or the aggregate ownership or control by all directors, officers, and controlling stockholders of the same insurer of those percentages or more of the stock of the person, as defined under "control" in G.S. 58-19-5(2).

(e) Nothing in this section prohibits:

- (1) A director or officer of any insurer from receiving the usual salary, compensation, or emoluments for services rendered in the ordinary course of that person's duties as a director or officer, if the salary, compensation, or emolument is authorized by vote of the board of directors of the insurer;
- (2) Any insurer in connection with the relocation of the place of employment of an officer, including any relocation in connection with the initial employment of the officer, from (i) making, or the officer from accepting therefrom, a mortgage loan to the officer on real property owned by the officer that is to serve as the officer's residence or (ii) acquiring, or the officer from selling thereto, at not more than its fair market value, the officer's prior residence;
- (3) The payment to a director or officer of any such insurer who is a licensed attorney-at-law of fees in connection with loans made by the insurer if and when the fees are paid by the borrower and do not constitute a charge against the insurer;
- (4) An insurer from making a loan upon a policy held therein by the borrower not in excess of the policy's net value; or

- (5) Subject to G.S. 58-19-30 and G.S. 58-7-163, an insurer from advancing funds to directors, officers, or controlling stockholders, for expenses reasonably expected to be incurred in the ordinary course of the insurer's business, as authorized or approved by the insurer's board of directors or by individuals authorized by the board and charged with the supervision or making of the advances. (1991, c. 681, s. 29; 2001-223, ss. 8.15, 8.16; 2007-127, s. 8.)

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

- (a) As used in this section, the following terms have the following meanings:
- (1) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether for-profit or not-for-profit.
  - (2) "Counterparty exposure" amount means:
    - a. The amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse ("over-the-counter derivative instrument"). The amount of credit risk equals:
      1. The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or
      2. Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.
    - b. If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties and the domicile of the counterparty is either within the United States or, if not within the United States, within a foreign jurisdiction listed in the Purposes and Procedures of the Securities Valuation Office of the NAIC as eligible for netting, the net amount of credit risk shall be the greater of zero or the net sum of:
      1. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and
      2. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.
    - c. For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties.
  - (3) "Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

- a. To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or
- b. That has a price, performance, value, or cash flow based primarily upon the actual or expected price level, performance, value, or cash flow of one or more underlying interests.

Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof. Derivative instruments shall additionally include any agreements, options, or instruments permitted under rules adopted under subsection (c) of this section. Derivative instruments shall not include an investment authorized by G.S. 58-7-173, 58-7-175, 58-7-178, 58-7-179, 58-7-180, and 58-7-187.

- (4) "Derivative transaction" means any transaction involving the use of one or more derivative instruments.
- (5) "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange. The clearinghouse provides clearing services, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risk as to each other.
- (6) "Qualified exchange" means:
  - a. A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78, et seq.), as amended;
  - b. A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission, or any successor thereof;
  - c. Private Offerings, Resales and Trading through Automated Linkages (PORTAL);
  - d. A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or
  - e. A qualified foreign exchange.
- (7) "Qualified foreign exchange" means a foreign exchange, board of trade, or contract market located outside the United States, its territories or possessions:
  - a. That has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30);
  - b. That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or



- c. Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, but an exchange, board of trade, or contract market that qualifies as a "qualified foreign exchange" only under this paragraph shall only be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of the no-action relief under this paragraph.
- (8) "Replication transaction" means a derivative transaction that is intended to replicate the investment in one or more assets that an insurer is authorized to acquire or sell under this section or G.S. 58-7-165. A derivative transaction that is entered into as a hedging transaction shall not be considered a replication transaction.
- (b) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:
    - (1) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions as may be further defined by rules adopted by the Commissioner.
    - (2) An insurer shall be able to demonstrate to the Commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.
  - (c) The Commissioner may adopt reasonable rules for investments and transactions under this section including, but not limited to, rules which impose financial solvency standards, valuation standards, and reporting requirements.
  - (d) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:
    - (1) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions then engaged in by the insurer does not exceed seven and one-half percent (7.5%) of its admitted assets;
    - (2) The aggregate statement value of options, caps, and floors written in hedging transactions then engaged in by the insurer does not exceed three percent (3%) of its admitted assets; and
    - (3) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions then engaged in by the insurer does not exceed six and one-half percent (6.5%) of its admitted assets.
  - (e) An insurer may enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:
    - (1) Sales of covered call options on noncallable fixed-income securities, callable fixed-income securities if the option expires by its terms before the end of the noncallable period, or derivative instruments based on fixed income securities;

- (2) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;
  - (3) Sales of covered puts on investments that the insurer is permitted to acquire under this Chapter, if the insurer has escrowed or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or
  - (4) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.
- (f) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of G.S. 58-7-170.
- (g) Under rules that may be adopted by the Commissioner, additional transactions involving the use of derivative instruments in excess of the limits of subsection (d) of this section or for other risk management purposes may be approved by the Commissioner.
- (h) An insurer shall establish guidelines and internal procedures as follows:
- (1) Before engaging in a derivative transaction, an insurer shall establish written guidelines that shall be used for effecting and maintaining the transactions. The guidelines shall:
    - a. Address investment or, if applicable, underwriting objectives, and risk constraints such as credit risk limits;
    - b. Address permissible transactions and the relationship of those transactions to its operations, such as a precise identification of the risks being hedged by a derivative transaction; and
    - c. Require compliance with internal control procedures.
  - (2) An insurer shall have a system for determining whether a derivative instrument used for hedging has been effective.
  - (3) An insurer shall have a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure amount.
  - (4) An insurer's board of directors shall, in accordance with G.S. 58-7-168:
    - a. Approve the guidelines required by subdivision (1) of this subsection and the systems required by subdivisions (2) and (3) of this subsection; and
    - b. Determine whether the insurer has adequate professional personnel, technical expertise and systems to implement investment practices involving derivatives.
- (i) An insurer shall maintain documentation and records relating to each derivative transaction, such as:
- (1) The purpose or purposes of the transaction;
  - (2) The assets or liabilities to which the transaction relates;
  - (3) The specific derivative instrument used in the transaction;
  - (4) For over-the-counter derivative instrument transactions, the name of the counterparty and counterparty exposure amount; and

- (5) For exchange-traded derivative instruments, the name of the exchange and the name of the firm that handled the trade.
- (j) Each derivative instrument shall be:
- (1) Traded on a qualified exchange;
  - (2) Entered into with, or guaranteed by, a business entity;
  - (3) Issued or written by or entered into with the issuer of the underlying interest on which the derivative instrument is based; or
  - (4) Entered into with a qualified foreign exchange. (2001-223, s. 8.17.)