

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 318
SENATE BILL 342

AN ACT TO IMPROVE INSURANCE COMPANY FINANCIAL MATTERS BY
ADOPTING STANDARDS FOR ASSUMPTION REINSURANCE, MATERIAL
TRANSACTIONS, AND PROPERTY AND CASUALTY INSURER CAPITAL.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 10.

~~"Conversion of Stock Corporations into Mutual
Corporations.~~

"Miscellaneous Insurer Financial Provisions.

"Part 1. Conversion from Stock to Mutual Corporation.

**"§ 58-10-1. Domestic stock life insurance corporations authorized to convert into
mutual corporations; procedure.**

Any domestic stock life insurance corporation may become a mutual life insurance corporation, and to that end may carry out a plan for the acquisition of shares of its capital stock: Provided, however, that such plan (i) shall have been adopted by a vote of a majority of the directors of such corporation; (ii) shall have been approved by a vote of the holders of two thirds of the stock outstanding at the time of issuing the call for a meeting for that purpose; (iii) shall have been submitted to the Commissioner and shall have been approved by him in writing, and (iv) shall have been approved by a majority vote of the policyholders (including, for the purpose of this ~~Article, Part,~~ the employer or the president, secretary or other executive officer of any corporation or association to which a master group policy has been issued, but excluding the holders of certificates or policies issued under or in connection with a master group policy) voting at said meeting, called for that purpose, at which meeting only such policyholders whose insurance shall then be in force and shall have been in force for at least one year prior to such a meeting shall be entitled to vote; notice of such a meeting shall be given by mailing such notice, postage prepaid, from the home office of such corporation at least 30 days prior to such meeting to such policyholders at their last known post-office addresses: Provided, that personal delivery of such written notice to any policyholder may be in lieu of mailing the same; and such meeting shall be otherwise provided for and conducted in such a manner as shall be provided in such plan: Provided, however, that policyholders may vote in person, by proxy, or by mail; that all such votes shall be cast by ballot, and a representative of the Commissioner shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions

concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the said representative and to the corporation the results thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the Commissioner; that all necessary expenses incurred by the Commissioner or his representative shall be paid by the corporation as certified to by said Commissioner. Every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the Commissioner: Provided, that neither such plan, nor any payment thereunder, nor any payment not fixed by such plan, shall be approved by the Commissioner, if the making of such payment shall reduce the assets of the corporation to an amount less than the entire liabilities of the corporation, including therein the net values of its outstanding contracts according to the standard adopted by the Commissioner, and also all other funds, contingent reserves and surplus which the corporation is required by order or direction of the Commissioner to maintain, save so much of the surplus as shall have been appropriated or paid under such plan.

"§ 58-10-5. Stock acquired to be turned over to voting trust until all stock acquired; dividends repaid to corporation for beneficiaries.

If a domestic stock life insurance corporation shall determine to become a mutual life insurance corporation it may, in carrying out any plan to that end under the provisions of G.S. 58-10-1, acquire any shares of its own stock by gift, bequest or purchase. And until all such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to not less than three nor more than five trustees, and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote until all of the capital stock of such corporation is acquired, when the entire capital stock shall be retired and canceled; and thereupon, unless sooner incorporated as such, the corporation shall be and become a mutual life insurance corporation without capital stock. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under G.S. 58-10-1. Said trustees shall file with the corporation and with the Commissioner a verified acceptance of their appointments and declaration that they will faithfully discharge their duties as such trustees. After the payment of such dividends to stockholders or former stockholders as may have been provided in the plan adopted under G.S. 58-10-1, all dividends and other sums received by said trustees on said shares of stock so acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are or may become policyholders of said corporation and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation, and be apportionable accordingly as a part of said surplus among said policyholders.

"Part 2. Assumption Reinsurance.

"§ 58-10-20. Scope.

(a) This Part applies to any licensed insurer that either assumes or transfers the obligations or risks on policies under an assumption reinsurance agreement that is entered into on or after January 1, 1996.

(b) This Part does not apply to:

- (1) Any reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks under the policies subject to the reinsurance agreement.
- (2) The substitution of one insurer for another upon the expiration of insurance coverage under statutory or contractual requirements and the issuance of a new policy by another insurer.
- (3) The transfer of policies under mergers or consolidations of two or more insurers to the extent that those transactions are regulated by statute.
- (4) Any insurer subject to a judicial order of liquidation or rehabilitation.
- (5) Any reinsurance agreement or transaction to which a state insurance guaranty association is a party, provided that policyholders do not lose any rights or claims afforded under their original policies under Articles 48 or 62 of this Chapter.
- (6) The transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder.

"§ 58-10-25. Definitions.

As used in this Part:

- (1) Assuming insurer. – The insurer that acquires an insurance obligation or risk from the transferring insurer under an assumption reinsurance agreement.
- (2) Assumption reinsurance agreement. – Any contract that:
 - a. Transfers insurance obligations or risks of existing or in-force policies from a transferring insurer to an assuming insurer.
 - b. Is intended to effect a novation of the transferred policy with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks under the contracts are extinguished.
- (3) Home service business. – Insurance business on which premiums are collected on a weekly or monthly basis by an agent of the insurer.
- (4) Policy. – A contract of insurance as defined in G.S. 58-1-10.
- (5) Policyholder. – Any person that has the right to terminate or otherwise alter the terms of a policy. It includes any group policy certificate holder whose certificate is in force on the proposed effective date of the assumption, if the certificate holder has the right to keep the certificate in force without any change in benefits after termination of the group policy. The right to keep the certificate in force referred to in this subdivision does not include the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act

('COBRA'), section 601, et seq., of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1161, et seq.

- (6) Transferring insurer. – The insurer that transfers an insurance obligation or risk to an assuming insurer under an assumption reinsurance agreement.

"§ 58-10-30. Notice requirements.

(a) The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent; or with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the affected policies.

(b) The notice of transfer shall be in a form identical or substantially similar to Appendix A of the NAIC Assumption Reinsurance Model Act, as amended by the NAIC and shall state or provide:

- (1) The date on which the transfer and novation of the policyholder's policy is proposed to take place.
- (2) The names, addresses, and telephone numbers of the assuming and transferring insurers.
- (3) That the policyholder has the right to either consent to or reject the transfer and novation.
- (4) The procedures and time limit for consenting to or rejecting the transfer and novation.
- (5) A summary of any effect that consenting to or rejecting the transfer and novation will have on the policyholder's rights.
- (6) A statement that the assuming insurer is licensed to write the type of business being assumed in the state where the policyholder resides, or is otherwise authorized, as provided in this Part, to assume that business.
- (7) The name and address of the person at the transferring insurer to whom the policyholder should send the policyholder's written statement of acceptance or rejection of the transfer and novation.
- (8) The address and telephone number of the insurance department where the policyholder resides so that the policyholder may write or call that insurance department for further information about the financial condition of the assuming insurer.
- (9) The following financial data for both insurers:
 - a. Ratings for the last five years, if available, or for any shorter period that is available, from two nationally recognized insurance rating services acceptable to the Commissioner, including the rating services' explanations of the meanings of their ratings. If ratings are unavailable for any year of the five-year period, this shall also be disclosed.

- b. A balance sheet as of December 31 for the previous three years, if available, or for any shorter period that is available, and as of the date of the most recent quarterly statement.
- c. A copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement.
- d. An explanation of the reason for the transfer.

(c) The notice of transfer shall include a preaddressed, postage-paid response card that the policyholder may return as the policyholder's written statement of acceptance or rejection of the transfer and novation.

(d) The notice of transfer shall be filed as part of the prior approval requirement set forth in subsection (e) of this section.

(e) Prior approval by the Commissioner is required for any transaction in which a domestic insurer assumes or transfers obligations or risks on policies under an assumption reinsurance agreement. No insurer licensed in this State shall transfer obligations or risks on policies issued to or owned by residents of this State to any insurer that is not licensed in this State. A domestic insurer shall not assume obligations or risks on policies issued to or owned by policyholders residing in any other state unless it is licensed in the other state, or the insurance regulator of that state has approved the assumption.

(f) Any licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on policies issued to or owned by residents of this State shall file with the Commissioner the assumption certificate, a copy of the notice of transfer, and an affidavit that the transaction is subject to substantially similar requirements in the states of domicile of both the transferring and assuming insurers. If those requirements do not exist in the state of domicile of either the transferring or assuming insurer, the requirements of subsection (g) of this section apply.

(g) Any licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on policies issued to or owned by residents of this State shall obtain prior approval of the Commissioner and be subject to all other requirements of this Part with respect to residents of this State, unless the transferring and assuming insurers are subject to assumption reinsurance requirements adopted by statute or administrative rule in the states of their domicile that are substantially similar to those contained in this Part and in any administrative rules adopted under this Part.

(h) The following factors, along with any other factors the Commissioner deems to be appropriate under the circumstances, shall be considered by the Commissioner in reviewing a request for approval:

- (1) The financial condition of the transferring and assuming insurers and the effect the transaction will have on the financial condition of each company.
- (2) The competence, experience, and integrity of those persons who control the operation of the assuming insurer.

- (3) The plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed transfer.
- (4) Whether the transfer is fair and reasonable to the policyholders of both insurers.
- (5) Whether the notice of transfer to be provided by the insurer is fair, adequate, and not misleading.

"§ 58-10-35. Policyholder rights.

(a) Policyholders may reject the transfer and novation of their policies by indicating on the response card that the assumption is rejected and returning the card to the transferring insurer.

(b) Payment of any premium to the assuming company during the 24-month period after the notice of transfer has been received indicates the policyholder's acceptance of the transfer to the assuming insurer; and a novation shall occur only if the premium notice clearly states that payment of the premium to the assuming insurer constitutes acceptance of the transfer. The premium notice shall also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to any home service business or any other business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the notice of transfer required by G.S. 58-10-30 and in the assumption certificate.

(c) After no fewer than 24 months after the mailing of the initial notice of transfer required under G.S. 58-10-30, if positive consent to, or rejection of, the transfer and assumption has not been received or consent has occurred under subsection (b) of this section, the transferring insurer shall send to the policyholder a second and final notice of transfer as specified in G.S. 58-10-30. If the policyholder does not accept or reject the transfer during the one-month period immediately after the date on which the transferring insurer mailed the second and final notice of transfer, the policyholder's consent and novation of the contract will occur. With respect to the home service business, or any other business not using premium notices, the 24-month and one-month periods shall be measured from the date of delivery of the notice of transfer under G.S. 58-10-30.

(d) The transferring insurer shall be deemed to have received the response card on the date it is postmarked. A policyholder may also send the response card by facsimile, other electronic transmission, registered mail, express delivery, or courier service; in which case the response card shall be deemed to have been received by the transferring insurer on the date of actual receipt by the transferring insurer.

"§ 58-10-40. Effect of consent.

If a policyholder consents to the transfer under G.S. 58-10-35 or if the transfer is effected under G.S. 58-10-45, there shall be a novation of the policy, subject to the assumption reinsurance agreement, with the result that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks.

"§ 58-10-45. Commissioner's discretion.

If a domestic insurer or a foreign insurer from a state having a substantially similar law is deemed by its domiciliary insurance regulator to be in hazardous financial condition or a proceeding has been instituted against it for the purpose of reorganizing or conserving the insurer, and the transfer of the policies is in the best interest of the policyholders, as determined by the domiciliary insurance regulator, a transfer and novation may be effected notwithstanding the provisions of this Part. This may include a form of implied consent and adequate notification to the policyholders of the circumstances requiring the transfer as approved by the Commissioner.

"Part 3. Disclosure of Material Transactions.

"§ 58-10-55. Report.

(a) This Part applies only to domestic insurers. Effective October 1, 1995, every insurer shall file a report with the Commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements, unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the Commissioner for review, approval, or informational purposes under any other provisions of this Chapter or the North Carolina Administrative Code. This report is due within 15 days after the end of the calendar month in which any of these transactions occurred. A copy of the report, including any filed exhibits or other attachments, shall also be filed with the NAIC.

(b) All reports obtained by or disclosed to the Commissioner under this Part are confidential and are not subject to subpoena. No report shall be made public by the Commissioner, the NAIC, or any other person, except to insurance regulators of other states, without the prior written consent of the reporting insurer, unless the Commissioner, after giving the insurer notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication of the report. In that event, the Commissioner may publish all or any part of the report in a manner the Commissioner considers appropriate.

"§ 58-10-60. Acquisitions and dispositions of assets.

(a) Insurers do not have to report acquisitions or dispositions under G.S. 58-10-55 if they are not material. For the purposes of this Part, a material acquisition or the aggregate of any series of related acquisitions during any 30-day period, or a material disposition or the aggregate of any series of related dispositions during any 30-day period, is one that is nonrecurring, not in the ordinary course of business, and involves more than five percent (5%) of the insurer's total admitted assets as reported in its most recent financial statement filed with the Department.

(b) Asset acquisitions subject to this Part include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of real property by or for the insurer or the acquisition of materials for that purpose. Asset dispositions subject to this Part include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

(c) The following information shall be disclosed in any report under this section:

(1) Date of the transaction.

- (2) Manner of acquisition or disposition.
- (3) Description of the assets involved.
- (4) Nature and amount of the consideration given or received.
- (5) Purpose of, or reason for, the transaction.
- (6) Manner by which the amount of consideration was determined.
- (7) Gain or loss recognized or realized as a result of the transaction.
- (8) Name of each person from whom the assets were acquired or to whom they were disposed.

(d) Every insurer shall report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

"§ 58-10-65. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

(a) Insurers do not have to report nonrenewals, cancellations, or revisions of ceded reinsurance agreements under G.S. 58-10-55 if they are not material. For the purposes of this Part, a nonrenewal, cancellation, or revision of a ceded reinsurance agreement is considered material and must be reported if:

- (1) It is for property and casualty business, including accident and health business written by a property and casualty insurer and affects:
 - a. More than fifty percent (50%) of the insurer's total ceded written premium; or
 - b. More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.
- (2) It is for life, annuity, and accident and health business and affects more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.
- (3) It is for either property and casualty, or life, annuity, and accident and health business, and:
 - a. An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers; or
 - b. Previously established collateral requirements have been reduced or waived with respect to one or more unauthorized reinsurer's representing collectively more than ten percent (10%) of a total cession.

(b) No filing is required if:

- (1) For property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business.
- (2) For life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement before any cession.
- (c) The following information shall be disclosed in any report under this section:
 - (1) Effective date of the nonrenewal, cancellation, or revision.
 - (2) Description of the transaction, with an identification of the initiator of the transaction.
 - (3) Purpose of, or reason for, the transaction.
 - (4) If applicable, identity of the replacement reinsurers.
- (d) Every insurer shall report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to the pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus."

Sec. 2. G.S. 58-12-2 reads as rewritten:

"§ 58-12-2. Definitions.

As used in this Article, the following terms have the following meanings:

- (1) Adjusted risk-based capital report. – A risk-based capital report that has been adjusted by the Commissioner under ~~G.S. 58-12-6(e).~~ G.S. 58-12-6.
- (2) Corrective Order. ~~order.~~ – An order issued by the Commissioner specifying corrective actions that the Commissioner has determined are required.
- (3) Domestic insurer. – Any ~~life or health~~ insurance company organized in this State under Article 7 of this Chapter.
- (4) Foreign insurer. – Any ~~life or health~~ insurance company that is admitted to do business in this State under Article 16 of this Chapter but is not domiciled in this State.
- (4a) Life or health insurer. – Any insurance company licensed to write the kinds of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property and casualty insurer writing only the kinds of insurance specified in G.S. 58-7-15(3).

- (5) Negative trend. – A negative trend–trend, with respect to a life or health insurer, over a period of time, as determined in accordance with the 'Trend Test Calculation' included in the risk-based capital instructions.
- (5a) Property or casualty insurer. – Any insurance company licensed to write the kinds of insurance specified in G.S. 58-7-15(4) through (22); but not monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers.
- (6) Risk-based capital instructions. – The risk-based capital report including risk-based capital instructions adopted by the NAIC, as those risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- (7) Risk-based capital level. – An insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital where:
 - a. 'Company action level risk-based capital' means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital.
 - b. 'Regulatory action level risk-based capital' means the product of 1.5 and its authorized control level risk-based capital.
 - c. 'Authorized control level risk-based capital' means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
 - d. 'Mandatory control level risk-based capital' means the product of .70 and the authorized control level risk-based capital.
- (8) Risk-based capital plan. – A comprehensive financial plan containing the elements specified in G.S. 58-12-11(b). If the Commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the 'revised risk-based capital plan'.
- (9) Risk-based capital report. – The report required in G.S. 58-12-6.
- (10) Total adjusted capital. – The sum of:
 - a. An insurer's statutory capital and surplus; surplus, as determined in accordance with the statutory accounting applicable to the annual financial statements required under G.S. 58-2-165; and
 - b. Such other items, if any, as the risk-based capital instructions may provide."

Sec. 3. Article 12 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-12-4. Finding; endorsement of additional capital.

The General Assembly finds that an excess of capital over the amount produced by the risk-based capital requirements contained in this Article and in the formulas,

schedules, and instructions referenced in this Article is desirable in the business of insurance. Accordingly, the General Assembly encourages insurers to seek to maintain capital above the risk-based capital levels required by this Article. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance but not accounted for or only partially measured by the risk-based capital requirements contained in this Article."

Sec. 4. G.S. 58-12-6 reads as rewritten:

"§ 58-12-6. Risk-based capital reports.

(a) Every domestic insurer shall, on or before each March ~~15~~1 (the 'filing date'), prepare and submit to the Commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

- (1) With the NAIC in accordance with the risk-based capital instructions; and
- (2) With the insurance regulator in any state in which the insurer is authorized to do business, if the Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:
 - a. Fifteen days after the receipt of notice to file its risk-based capital report with that state; or
 - b. The filing date.

(b) ~~An~~A life or health insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account (and may adjust for the covariance between):

- (1) The risk with respect to the insurer's assets;
- (2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- (3) The interest rate risk with respect to the insurer's business; and
- (4) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

These risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(c) If a domestic insurer files a risk-based capital report that in the judgment of the Commissioner is inaccurate, the Commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk-based capital report as adjusted is referred to as an 'adjusted risk-based capital report'.

(d) A property or casualty insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account (and may adjust for the covariance between):

- (1) Asset risk;
- (2) Credit risk;
- (3) Underwriting risk; and

- (4) All business and other relevant risks set forth in the risk-based capital instructions, determined in each case by applying the factors in the manner set forth in the risk-based capital instructions."

Sec. 5. G.S. 58-12-11(a) reads as rewritten:

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

- (1) The filing of a risk-based capital report by an insurer that indicates that:
 - a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
 - b. The insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative ~~trend~~-trend, if the insurer is a life or health insurer.
- (2) The notification by the Commissioner to the insurer of an adjusted risk-bases capital report that indicates the event in sub-subdivision (1)a. or b. of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in sub-subdivision (1)a. or b. of this subsection under G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the insurer's challenge."

Sec. 6. G.S. 58-12-40 reads as rewritten:

"§ 58-12-40. Supplemental ~~provisions~~-provisions; rules; exemptions.

(a) The provisions of this Article are supplemental to any other provisions of the laws of this State, and do not preclude or limit any other powers or duties of the Commissioner under those laws, including Article 30 of this Chapter.

(b) Risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are solely for use by the Commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The Commissioner shall not use any of these reports or plans for rate making nor consider or introduce them as evidence in any rate proceeding. The Commissioner shall not use these reports or plans to calculate or derive any elements of an appropriate premium level or rate of return for any kind of insurance that an insurer or any affiliate is authorized to write.

(c) The Commissioner may exempt from the application of this Article any domestic property or casualty insurer that does all of the following:

- (1) Writes direct business only in this State.
- (2) Writes direct annual premiums of one thousand dollars (\$1,000) or less.
- (3) Assumes no reinsurance in excess of five percent (5%) of direct written premiums."

Sec. 7. Article 12 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-12-60. Property or casualty phase-in provision.

For risk-based capital reports required to be filed by property or casualty insurers with respect to 1995, the following requirements apply in lieu of the provisions of G.S. 58-12-11, 58-12-16, 58-12-21, and 58-12-25:

- (1) In the event of a company action level event with respect to a domestic insurer, the Commissioner shall take no regulatory action under this Article.
- (2) In the event of a regulatory action level event under G.S. 58-12-16(a)(1), (2), or (3), the Commissioner shall take the actions required under G.S. 58-12-11.
- (3) In the event of a regulatory action level event under G.S. 58-12-16(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event, the Commissioner shall take the actions required under G.S. 58-12-16 with respect to the insurer.
- (4) In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under G.S. 58-12-21 with respect to the insurer."

Sec. 8. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional or invalid.

Sec. 9. Part 2 of Section 1 of this act becomes effective January 1, 1996, and applies to assumption reinsurance agreements entered into on or after that date. The remainder of this act becomes effective January 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives