

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 408*

Short Title: Insurer Financial Amendments/AB.

(Public)

Sponsors: Representatives Dockham; and McMahan.

Referred to: Insurance.

March 9, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE INSURANCE COMPANY FINANCIAL MATTERS BY
3 ADOPTING STANDARDS FOR ASSUMPTION REINSURANCE, MATERIAL
4 TRANSACTIONS, AND PROPERTY AND CASUALTY INSURER CAPITAL.

5 The General Assembly of North Carolina enacts:

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

7 "ARTICLE 10.

8 ~~"CONVERSION OF STOCK CORPORATIONS INTO MUTUAL~~
9 ~~CORPORATIONS.~~

10 "MISCELLANEOUS INSURER FINANCIAL PROVISIONS.

11
12 "PART 1. CONVERSION FROM STOCK TO MUTUAL CORPORATION.

13
14 "§ 58-10-1. Domestic stock life insurance corporations authorized to convert into
15 mutual corporations; procedure.

16 Any domestic stock life insurance corporation may become a mutual life insurance
17 corporation, and to that end may carry out a plan for the acquisition of shares of its
18 capital stock: Provided, however, that such plan (i) shall have been adopted by a vote
19 of a majority of the directors of such corporation; (ii) shall have been approved by a vote
20 of the holders of two thirds of the stock outstanding at the time of issuing the call for a

1 meeting for that purpose; (iii) shall have been submitted to the Commissioner and shall
2 have been approved by him in writing, and (iv) shall have been approved by a majority
3 vote of the policyholders (including, for the purpose of this ~~Article, Part,~~ the employer or
4 the president, secretary or other executive officer of any corporation or association to
5 which a master group policy has been issued, but excluding the holders of certificates or
6 policies issued under or in connection with a master group policy) voting at said meeting,
7 called for that purpose, at which meeting only such policyholders whose insurance shall
8 then be in force and shall have been in force for at least one year prior to such a meeting
9 shall be entitled to vote; notice of such a meeting shall be given by mailing such notice,
10 postage prepaid, from the home office of such corporation at least 30 days prior to such
11 meeting to such policyholders at their last known post-office addresses: Provided, that
12 personal delivery of such written notice to any policyholder may be in lieu of mailing the
13 same; and such meeting shall be otherwise provided for and conducted in such a manner
14 as shall be provided in such plan: Provided, however, that policyholders may vote in
15 person, by proxy, or by mail; that all such votes shall be cast by ballot, and a
16 representative of the Commissioner shall supervise and direct the methods and procedure
17 of said meeting and appoint an adequate number of inspectors to conduct the voting at
18 said meeting who shall have power to determine all questions concerning the verification
19 of the ballots, the ascertainment of the validity thereof, the qualifications of the voters,
20 and the canvass of the vote, and who shall certify to the said representative and to the
21 corporation the results thereof, and with respect thereto shall act under such rules and
22 regulations as shall be prescribed by the Commissioner; that all necessary expenses
23 incurred by the Commissioner or his representative shall be paid by the corporation as
24 certified to by said Commissioner. Every payment for the acquisition of any shares of the
25 capital stock of such corporation, the purchase price of which is not fixed by such plan,
26 shall be subject to the approval of the Commissioner: Provided, that neither such plan,
27 nor any payment thereunder, nor any payment not fixed by such plan, shall be approved
28 by the Commissioner, if the making of such payment shall reduce the assets of the
29 corporation to an amount less than the entire liabilities of the corporation, including
30 therein the net values of its outstanding contracts according to the standard adopted by
31 the Commissioner, and also all other funds, contingent reserves and surplus which the
32 corporation is required by order or direction of the Commissioner to maintain, save so
33 much of the surplus as shall have been appropriated or paid under such plan.

34 **"§ 58-10-5. Stock acquired to be turned over to voting trust until all stock acquired;**
35 **dividends repaid to corporation for beneficiaries.**

36 If a domestic stock life insurance corporation shall determine to become a mutual life
37 insurance corporation it may, in carrying out any plan to that end under the provisions of
38 G.S. 58-10-1, acquire any shares of its own stock by gift, bequest or purchase. And until
39 all such shares are acquired, any shares so acquired shall be acquired in trust for the
40 policyholders of the corporation as hereinafter provided, and shall be assigned and
41 transferred on the books of the corporation to not less than three nor more than five
42 trustees, and be held by them in trust and be voted by such trustees at all corporate
43 meetings at which stockholders have the right to vote until all of the capital stock of such

1 corporation is acquired, when the entire capital stock shall be retired and canceled; and
2 thereupon, unless sooner incorporated as such, the corporation shall be and become a
3 mutual life insurance corporation without capital stock. Said trustees shall be appointed
4 and vacancies shall be filled as provided in the plan adopted under G.S. 58-10-1. Said
5 trustees shall file with the corporation and with the Commissioner a verified acceptance
6 of their appointments and declaration that they will faithfully discharge their duties as
7 such trustees. After the payment of such dividends to stockholders or former
8 stockholders as may have been provided in the plan adopted under G.S. 58-10-1, all
9 dividends and other sums received by said trustees on said shares of stock so acquired,
10 after paying the necessary expenses of executing said trust, shall be immediately repaid to
11 said corporation for the benefit of all who are or may become policyholders of said
12 corporation and entitled to participate in the profits thereof, and shall be added to and
13 become a part of the surplus earned by said corporation, and be apportionable
14 accordingly as a part of said surplus among said policyholders.

15 **"PART 2. ASSUMPTION REINSURANCE.**

16 **"§ 58-10-20. Scope.**

17 (a) This Part applies to any licensed insurer that either assumes or transfers the
18 obligations or risks on policies under an assumption reinsurance agreement.

19 (b) This Part does not apply to:

20 (1) Any reinsurance agreement or transaction in which the ceding insurer
21 continues to remain directly liable for its insurance obligations or risks
22 under the policies subject to the reinsurance agreement.

23 (2) The substitution of one insurer for another upon the expiration of
24 insurance coverage under statutory or contractual requirements and the
25 issuance of a new policy by another insurer.

26 (3) The transfer of policies under mergers or consolidations of two or more
27 insurers to the extent that those transactions are regulated by statute.

28 (4) Any insurer subject to a judicial order of liquidation or rehabilitation.

29 (5) Any reinsurance agreement or transaction to which a state insurance
30 guaranty association is a party, provided that policyholders do not lose
31 any rights or claims afforded under their original policies under Articles
32 48 or 62 of this Chapter.

33 (6) The transfer of liabilities from one insurer to another under a single
34 group policy upon the request of the group policyholder.

35 **"§ 58-10-25. Definitions.**

36 As used in this Part:

37 (1) 'Assuming insurer' means the insurer that acquires an insurance
38 obligation or risk from the transferring insurer under an assumption
39 reinsurance agreement.

40 (2) 'Assumption reinsurance agreement' means any contract that:

41 a. Transfers insurance obligations or risks of existing or in-force
42 policies from a transferring insurer to an assuming insurer.

1 b. Is intended to effect a novation of the transferred policy with the
2 result that the assuming insurer becomes directly liable to the
3 policyholders of the transferring insurer and the transferring
4 insurer's insurance obligations or risks under the contracts are
5 extinguished.

6 (3) 'Home service business' means insurance business on which premiums
7 are collected on a weekly or monthly basis by an agent of the insurer.

8 (4) 'Policy' means a contract of insurance as defined in G.S. 58-1-10.

9 (5) 'Policyholder' means any person that has the right to terminate or
10 otherwise alter the terms of a policy. It includes any group policy
11 certificate holder whose certificate is in force on the proposed effective
12 date of the assumption, if the certificate holder has the right to keep the
13 certificate in force without any change in benefits after termination of
14 the group policy. The right to keep the certificate in force referred to in
15 this subdivision does not include the right to elect individual coverage
16 under the Consolidated Omnibus Budget Reconciliation Act
17 ('COBRA'), section 601, et seq., of the Employee Retirement Income
18 Security Act of 1974, as amended, 29 U.S.C. 1161, et seq.

19 (6) 'Transferring insurer' means the insurer that transfers an insurance
20 obligation or risk to an assuming insurer under an assumption
21 reinsurance agreement.

22 **"§ 58-10-30. Notice requirements.**

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

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

32 (1) The date on which the transfer and novation of the policyholder's policy
33 is proposed to take place.

34 (2) The names, addresses, and telephone numbers of the assuming and
35 transferring insurers.

36 (3) That the policyholder has the right to either consent to or reject the
37 transfer and novation.

38 (4) The procedures and time limit for consenting to or rejecting the transfer
39 and novation.

40 (5) A summary of any effect that consenting to or rejecting the transfer and
41 novation will have on the policyholder's rights.

- 1 (6) A statement that the assuming insurer is licensed to write the type of
2 business being assumed in the state where the policyholder resides, or is
3 otherwise authorized, as provided in this Part, to assume that business.
- 4 (7) The name and address of the person at the transferring insurer to whom
5 the policyholder should send the policyholder's written statement of
6 acceptance or rejection of the transfer and novation.
- 7 (8) The address and telephone number of the insurance department where
8 the policyholder resides so that the policyholder may write or call that
9 insurance department for further information about the financial
10 condition of the assuming insurer.
- 11 (9) The following financial data for both insurers:
- 12 a. Ratings for the last five years, if available, or for any shorter
13 period that is available, from two nationally recognized insurance
14 rating services acceptable to the Commissioner, including the
15 rating services' explanations of the meanings of their ratings. If
16 ratings are unavailable for any year of the five-year period, this
17 shall also be disclosed.
- 18 b. A balance sheet as of December 31 for the previous three years,
19 if available, or for any shorter period that is available, and as of
20 the date of the most recent quarterly statement.
- 21 c. A copy of the Management's Discussion and Analysis that was
22 filed as a supplement to the previous year's annual statement.
- 23 d. An explanation of the reason for the transfer.
- 24 (c) The notice of transfer shall include a preaddressed, postage-paid response card
25 that the policyholder may return as the policyholder's written statement of acceptance or
26 rejection of the transfer and novation.
- 27 (d) The notice of transfer shall be filed as part of the prior approval requirement
28 set forth in subsection (e) of this section.
- 29 (e) Prior approval by the Commissioner is required for any transaction in which a
30 domestic insurer assumes or transfers obligations or risks on policies under an
31 assumption reinsurance agreement. No insurer licensed in this State shall transfer
32 obligations or risks on policies issued to or owned by residents of this State to any insurer
33 that is not licensed in this State. A domestic insurer shall not assume obligations or risks
34 on policies issued to or owned by policyholders residing in any other state unless it is
35 licensed in the other state, or the insurance regulator of that state has approved the
36 assumption.
- 37 (f) Any licensed foreign insurer that enters into an assumption reinsurance
38 agreement that transfers the obligations or risks on policies issued to or owned by
39 residents of this State shall file with the Commissioner the assumption certificate, a copy
40 of the notice of transfer, and an affidavit that the transaction is subject to substantially
41 similar requirements in the states of domicile of both the transferring and assuming
42 insurers. If those requirements do not exist in the state of domicile of either the
43 transferring or assuming insurer, the requirements of subsection (g) of this section apply.

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

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

12 (1) The financial condition of the transferring and assuming insurers and
13 the effect the transaction will have on the financial condition of each
14 company.

15 (2) The competence, experience, and integrity of those persons who control
16 the operation of the assuming insurer.

17 (3) The plans or proposals the assuming insurer has with respect to the
18 administration of the policies subject to the proposed transfer.

19 (4) Whether the transfer is fair and reasonable to the policyholders of both
20 insurers.

21 (5) Whether the notice of transfer to be provided by the insurer is fair,
22 adequate, and not misleading.

23 **"§ 58-10-35. Policyholder rights.**

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

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

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

1 other business not using premium notices, the 24-month and one-month periods shall be
2 measured from the date of delivery of the notice of transfer under G.S. 58-10-30.

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

8 **"§ 58-10-40. Effect of consent.**

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

15 **"§ 58-10-45. Commissioner's discretion.**

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

24 **"§ 58-10-50. Effective date and scope.**

25 This Part becomes effective January 1, 1996, and applies to all assumption
26 reinsurance agreements entered into on or after that date.

27 **"PART 3. DISCLOSURE OF MATERIAL TRANSACTIONS.**

28 **"§ 58-10-55. Report.**

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

39 (b) All reports obtained by or disclosed to the Commissioner under this Part are
40 confidential and are not subject to subpoena. No report shall be made public by the
41 Commissioner, the NAIC, or any other person, except to insurance regulators of other
42 states, without the prior written consent of the reporting insurer unless the Commissioner,
43 after giving the insurer notice and an opportunity to be heard, determines that the interest

1 of policyholders, shareholders, or the public will be served by the publication of the
2 report. In that event, the Commissioner may publish all or any part of the report in a
3 manner the Commissioner considers appropriate.

4 **"§ 58-10-60. Acquisitions and dispositions of assets.**

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

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

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

19 (1) Date of the transaction.

20 (2) Manner of acquisition or disposition.

21 (3) Description of the assets involved.

22 (4) Nature and amount of the consideration given or received.

23 (5) Purpose of, or reason for, the transaction.

24 (6) Manner by which the amount of consideration was determined.

25 (7) Gain or loss recognized or realized as a result of the transaction.

26 (8) Name of each person from whom the assets were acquired or to whom
27 they were disposed.

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

38 **"§ 58-10-65. Nonrenewals, cancellations, or revisions of ceded reinsurance**
39 **agreements.**

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

- 1 (1) It is for property and casualty business, including accident and health
2 business written by a property and casualty insurer and affects:
3 a. More than fifty percent (50%) of the insurer's total ceded written
4 premium; or
5 b. More than fifty percent (50%) of the insurer's total ceded
6 indemnity and loss adjustment reserves.
7 (2) It is for life, annuity, and accident and health business and affects more
8 than fifty percent (50%) of the total reserve credit taken for business
9 ceded, on an annualized basis, as indicated in the insurer's most recent
10 annual statement.
11 (3) It is for either property and casualty or life, annuity, and accident and
12 health business, and:
13 a. An authorized reinsurer representing more than ten percent
14 (10%) of a total cession is replaced by one or more unauthorized
15 reinsurers; or
16 b. Previously established collateral requirements have been reduced
17 or waived with respect to one or more unauthorized reinsurer's
18 representing collectively more than ten percent (10%) of a total
19 cession.
20 (b) No filing is required if:
21 (1) For property and casualty business, including accident and health
22 business written by a property and casualty insurer, the insurer's total
23 ceded written premium represents, on an annualized basis, less than ten
24 percent (10%) of its total written premium for direct and assumed
25 business.
26 (2) For life, annuity, and accident and health business, the total reserve
27 credit taken for business ceded represents, on an annualized basis, less
28 than ten percent (10%) of the statutory reserve requirement before any
29 cession.
30 (c) The following information shall be disclosed in any report under this section:
31 (1) Effective date of the nonrenewal, cancellation, or revision.
32 (2) Description of the transaction, with an identification of the initiator of
33 the transaction.
34 (3) Purpose of, or reason for, the transaction.
35 (4) If applicable, identity of the replacement reinsurers.
36 (d) Every insurer shall report all material nonrenewals, cancellations, or revisions
37 of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a
38 consolidated group of insurers that utilizes a pooling arrangement or one hundred percent
39 (100%) reinsurance agreement that affects the solvency and integrity of the insurer's
40 reserves and the insurer ceded substantially all of its direct and assumed business to the
41 pool. An insurer cedes substantially all of its direct and assumed business to a pool if the
42 insurer has less than one million dollars (\$1,000,000) total direct plus assumed written
43 premiums during a calendar year that are not subject to the pooling arrangement and the

1 net income of the business not subject to the pooling arrangement represents less than
2 five percent (5%) of the insurer's capital and surplus."

3 Sec. 2. 58-12-2 reads as rewritten:

4 **"§ 58-12-2. Definitions.**

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

- 6 (1) Adjusted risk-based capital report. – A risk-based capital report that has
7 been adjusted by the Commissioner under ~~G.S. 58-12-6(e)~~. G.S. 58-12-6.
- 8 (2) ~~Corrective Order~~. Corrective order. – An order issued by the Commissioner
9 specifying corrective actions that the Commissioner has determined are
10 required.
- 11 (3) Domestic insurer. – Any ~~life or health~~ insurance company organized in
12 this State under Article 7 of this Chapter.
- 13 (4) Foreign insurer. – Any ~~life or health~~ insurance company that is admitted
14 to do business in this State under Article 16 of this Chapter but is not
15 domiciled in this State.
- 16 (4a) Life or health insurer. – Any insurance company licensed to write the
17 kinds of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed
18 property and casualty insurer writing only the kinds of insurance
19 specified in G.S. 58-7-15(3).
- 20 (5) Negative trend. – A negative ~~trend~~ trend, with respect to a life or health
21 insurer, over a period of time, as determined in accordance with the
22 'Trend Test Calculation' included in the risk-based capital instructions.
- 23 (5a) Property or casualty insurer. – Any insurance company licensed to write
24 the kinds of insurance specified in G.S. 58-7-15(4) through (22); but not
25 monoline mortgage guaranty insurers, financial guaranty insurers, or
26 title insurers.
- 27 (6) Risk-based capital instructions. – The risk-based capital report including
28 risk-based capital instructions adopted by the NAIC, as those risk-based
29 capital instructions may be amended by the NAIC from time to time in
30 accordance with the procedures adopted by the NAIC.
- 31 (7) Risk-based capital level. – An insurer's company action level risk-based
32 capital, regulatory action level risk-based capital, authorized control
33 level risk-based capital, or mandatory control level risk-based capital
34 where:
- 35 a. 'Company action level risk-based capital' means, with respect to
36 any insurer, the product of 2.0 and its authorized control level
37 risk-based capital.
- 38 b. 'Regulatory action level risk-based capital' means the product of
39 1.5 and its authorized control level risk-based capital.
- 40 c. 'Authorized control level risk-based capital' means the number
41 determined under the risk-based capital formula in accordance
42 with the risk-based capital instructions.

- 1 d. 'Mandatory control level risk-based capital' means the product of
2 .70 and the authorized control level risk-based capital.
- 3 (8) Risk-based capital plan. – A comprehensive financial plan containing
4 the elements specified in G.S. 58-12-11(b). If the Commissioner rejects
5 the risk-based capital plan, and it is revised by the insurer, with or
6 without the Commissioner's recommendation, the plan shall be called
7 the 'revised risk-based capital plan'.
- 8 (9) Risk-based capital report. – The report required in G.S. 58-12-6.
- 9 (10) Total adjusted capital. – The sum of:
- 10 a. An insurer's statutory capital and ~~surplus; surplus, as determined~~
11 in accordance with the statutory accounting applicable to the
12 annual financial statements required under G.S. 58-2-165; and
- 13 b. Such other items, if any, as the risk-based capital instructions
14 may provide."

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

17 **"§ 58-12-4. Finding; endorsement of additional capital.**

18 The General Assembly finds that an excess of capital over the amount produced by
19 the risk-based capital requirements contained in this Article and in the formulas,
20 schedules, and instructions referenced in this Article is desirable in the business of
21 insurance. Accordingly, the General Assembly encourages insurers to seek to maintain
22 capital above the risk-based capital levels required by this Article. Additional capital is
23 used and useful in the insurance business and helps to secure an insurer against various
24 risks inherent in or affecting the business of insurance but not accounted for or only
25 partially measured by the risk-based capital requirements contained in this Article."

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

27 **"§ 58-12-6. Risk-based capital reports.**

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

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

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

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

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

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

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

- 20 (1) Asset risk;
- 21 (2) Credit risk;
- 22 (3) Underwriting risk; and
- 23 (4) All business and other relevant risks set forth in the risk-based capital
24 instructions, determined in each case by applying the factors in the
25 manner set forth in the risk-based capital instructions."

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

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

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

1 G.S. 58-12-30, the notification by the Commissioner to the insurer that
2 the Commissioner has rejected the insurer's challenge."

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

4 **"§ 58-12-40. Supplemental ~~provisions~~; provisions; rules; exemptions.**

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

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

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

18 (1) Writes direct business only in this State.

19 (2) Writes direct annual premiums of one thousand dollars (\$1,000) or less.

20 (3) Assumes no reinsurance in excess of five percent (5%) of direct written
21 premiums."

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

24 **"§ 58-12-60. Property or casualty phase-in provision.**

25 For risk-based capital reports required to be filed by property or casualty insurers with
26 respect to 1995, the following requirements apply in lieu of the provisions of G.S. 58-12-
27 11, 58-12-16, 58-12-21, and 58-12-25:

28 (1) In the event of a company action level event with respect to a domestic
29 insurer, the Commissioner shall take no regulatory action under this
30 Article.

31 (2) In the event of a regulatory action level event under G.S. 58-12-
32 16(a)(1), (2), or (3), the Commissioner shall take the actions required
33 under G.S. 58-12-11.

34 (3) In the event of a regulatory action level event under G.S. 58-12-
35 16(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event,
36 the Commissioner shall take the actions required under G.S. 58-12-16
37 with respect to the insurer.

38 (4) In the event of a mandatory control level event with respect to an
39 insurer, the Commissioner shall take the actions required under G.S. 58-
40 12-21 with respect to the insurer."

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

1 Sec. 9. Sections 2 through 7 of this act become effective January 1, 1996. The
2 remainder of this act becomes effective July 1, 1995, and applies to assumption
3 reinsurance agreements entered into on or after that date.