

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 342

Short Title: Insurer Financial Amendments/AB.

(Public)

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Sponsors: Senator Soles.

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Referred to: Pensions and Retirement/Insurance/State Personnel

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March 8, 1995

A BILL TO BE ENTITLED

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

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~~-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.