

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-78
HOUSE BILL 287

AN ACT TO ENHANCE AND IMPROVE CONSUMER PROTECTIONS AND TRANSPARENCY RELATED TO MOTOR VEHICLE MAINTENANCE AND REPAIRS, LONG-TERM CARE INSURANCE, AND CONSENT TO RATE; TO STUDY VOLUNTEER FIREFIGHTER RECRUITMENT AND RETENTION EFFORTS; TO INCREASE THE CRIMINAL PENALTY FOR LARGE-SCALE FRAUD COMMITTED BY AN INSURANCE FIDUCIARY AND STRENGTHEN COMMERCIAL AUTO RATE EVASION REFORM; TO MAKE VARIOUS TECHNICAL AND POLICY CHANGES TO NORTH CAROLINA'S CAPTIVE INSURANCE LAW PROVISIONS; TO ENABLE THE ESTABLISHMENT OF A STATE-BASED PRIVATE FLOOD INSURANCE MARKET; TO ENABLE INSURERS TO RECEIVE RESTITUTION FROM CONVICTED DEFENDANTS; TO EXEMPT CERTAIN ACCOUNTABLE CARE ORGANIZATIONS FROM DEPARTMENT REGULATION; AND TO MAKE OTHER AMENDMENTS TO INSURANCE LAWS, AS RECOMMENDED BY THE DEPARTMENT.

The General Assembly of North Carolina enacts:

PART I. CONSUMER TRANSPARENCY AND ASSISTANCE PROVISIONS

SECTION 1.1. G.S. 58-36-75(a) reads as rewritten:

"(a) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) may provide for separate surcharges for major, intermediate, and minor accidents. A "major accident" is an at-fault accident that results in either (i) bodily injury or death or (ii) only property damage of ~~three thousand eighty five dollars (\$3,085)~~ three thousand eight hundred fifty dollars (\$3,850) or more. An "intermediate accident" is an at-fault accident that results in only property damage of more than ~~one thousand eight hundred fifty dollars (\$1,850)~~ two thousand three hundred dollars (\$2,300) but less than ~~three thousand eighty five dollars (\$3,085)~~ three thousand eight hundred fifty dollars (\$3,850). A "minor accident" is an at-fault accident that results in only property damage of ~~one thousand eight hundred fifty dollars (\$1,850)~~ two thousand three hundred dollars (\$2,300) or less. The subclassification plan may also exempt certain minor accidents from the Facility recoupment surcharge. The Bureau shall assign varying Safe Driver Incentive Plan point values and surcharges for bodily injury in at-fault accidents that are commensurate with the severity of the injury, provided that the point value and surcharge assigned for the most severe bodily injury shall not exceed the point value and surcharge assigned to a major accident involving only property damage."

SECTION 1.2. G.S. 58-51-95 is amended by adding a new subsection to read:

"(f1) For long-term care policy forms, the maximum rate increase that may be implemented in any calendar year for any policyholder is an increase of twenty-five percent (25%) of the current policy premium rate in effect prior to the increase."

SECTION 1.3.(a) G.S. 58-36-30 reads as rewritten:

"§ 58-36-30. Deviations.

...
(b1) This subsection applies only to insurance against loss to residential real property with not more than four housing units. A rate in excess of that promulgated by the Bureau may be charged by an insurer on any specific risk if the higher rate is charged in accordance with rules adopted by the Commissioner and is charged with the knowledge and written consent of the insured. An insurer shall give reasonable notice to the insured by including the following language on the insured's written consent to rate form in at least 14 point type, bolded, and underlined:



"NOTICE: THE PREMIUM USING NORTH CAROLINA RATE BUREAU'S APPROVED RATES FOR THE HOMEOWNER'S INSURANCE COVERAGE I APPLIED FOR IS \$ _____. THE PREMIUM FOR THIS COVERAGE IS \$ _____. THE TOTAL PERCENTAGE INCREASE ABOVE THE APPROVED RATES IS _____%."

The insurer shall provide the rate information on the disclosure statement above, as applicable, to the insured. The disclosure statement noted above in this subsection shall be included on any renewal of or endorsement to the policy for any subsequent increase above the manual rate following the initial written consent of an insured. However, once an initial written consent to rate is received, the insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy. The insurer shall give at least 30 days' notice to the insured for all written consents to rate and notices required under this subsection on all policy renewals and endorsements. The insurer shall retain the signed consent form and other policy information for each insured and make this information available to the Commissioner, upon request of the Commissioner. Any data obtained by the Commissioner under this subsection is proprietary and confidential and is not a public record under G.S. 132-1 or G.S. 58-2-100.

...."

SECTION 1.3.(b) G.S. 58-36-10 reads as rewritten:

"§ 58-36-10. Method of rate making; factors considered.

The following standards shall apply to the making and use of rates:

- ...
- (3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. If the Rate Bureau presents any modeled hurricane losses based upon a commercial hurricane simulation computer model with a property insurance rate filing, the Bureau shall present data from more than one such model. The Commissioner shall consider modeled hurricane losses presented by the Rate Bureau.

...."

SECTION 1.3.(c) G.S. 58-36-15 reads as rewritten:

"§ 58-36-15. Filing loss costs, rates, plans with Commissioner; public inspection of filings.

...

(d2) The following supporting data, at a minimum, shall be included in any property insurance rate filing where a catastrophe model is used:

- (1) Any simulated loss from a catastrophe model should include the following:
- a. An event identifier.
 - b. The simulation year.
 - c. The State and county of first landfall, and the wind speed, based upon the Saffir-Simpson scale, at landfall.
 - d. The gross amount of North Carolina damages before application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.

- e. The net amount of North Carolina insured loss after application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.
- f. Any other information required by rules promulgated by the Commissioner.
- (2) Annual historical exposure and hurricane loss data by territory for 2003 and each subsequent year. The Bureau shall also provide annual historical exposure and hurricane loss data by territory for 1987 through 2002 to the extent this data is reasonably available.
- (3) If requested by the Department, a statistical analysis comparing the historic loss data required by subdivision (2) of this subsection with any simulated losses used to support the rate filing.
- (4) Trade secret information provided under this subsection is confidential and shall be handled in accordance with the provisions of G.S. 66-152 and G.S. 132-1.2.

(d3) In all residential property insurance rate filings, the Bureau shall set forth for each territory in the State (i) that portion of the rate based on all risks with the exception of wind and hail and (ii) that portion of the rate based on consideration of risks and the costs of reinsurance for wind and hail. The Department shall post both the filed rate and the final rate for each territory on its Web site, including that portion of the filed rate and the final rate for each territory based on all risks with the exception of wind and hail and that portion based on wind and hail.

...."

PART II. FIRE AND RESCUE PROVISIONS

SECTION 2.1.(a) G.S. 58-87-1(b) reads as rewritten:

"(b) Eligible Fire Department. – A fire department is eligible for a grant under this section if it meets all of the conditions of this subsection. No fire department may be declared ineligible for a grant solely because it is classified as a municipal fire department.

- (1) ~~It serves a response area of 12,000 or less in population. In making the population determination, the Department must use the most recent annual population estimates certified by the State Budget Officer.~~
- (2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of six full-time paid positions.
- (3) It has been certified by the Department of Insurance."

SECTION 2.1.(b) G.S. 58-87-5(a) reads as rewritten:

"(a) There is created in the Department of Insurance the Volunteer Rescue/EMS Fund to provide grants to volunteer rescue units, rescue/EMS units, EMS units that are volunteer fire departments that are a part of a county's EMS system plan, and EMS units providing rescue or rescue and emergency medical services to purchase equipment and make capital improvements. An eligible unit may apply to the Department of Insurance for a grant under this section. The application form and criteria for grants shall be established by the Department. The North Carolina Association of Rescue and Emergency Medical Services, Inc., shall provide the Department with an advisory priority listing for rescue equipment eligible for funding, and the Department of Health and Human Services shall provide the Department with an advisory priority listing of EMS equipment eligible for funding. The State Treasurer shall invest the Fund's assets according to law, and the earnings shall remain in the Fund. On December 15, or on the first business day after December 15 if December 15 falls on a weekend or a holiday, of each year, the Department shall make grants to eligible units subject to all of the following limitations:

- (1) A grant to an applicant who is required to match the grant with non-State funds may not exceed twenty-five thousand dollars (\$25,000), and a grant to an applicant who is not required to match the grant with non-State funds may not exceed three thousand dollars (\$3,000).
- (2) An applicant whose liquid assets, when combined with the liquid assets of any corporate affiliate or subsidiary of the applicant, are more than one thousand dollars (\$1,000) shall match the grant on a dollar-for-dollar basis with non-State funds.

- (3) The grant may be used only for equipment purchases or capital expenditures.
- (4) An applicant may receive no more than one grant per fiscal year.
- (5) The grant may be used only for purposes related to services that the unit is authorized to provide.

In awarding grants under this section, the Department shall to the extent possible select applicants from all parts of the State based upon need, ~~subject to the following priority order: (i) rescue units, (ii) rescue/EMS units, (iii) EMS units that are licensed as EMS providers under G.S. 131E-155.1, and, finally, (iv) EMS units that are volunteer fire departments that are a part of a county's EMS system plan.~~ Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year. In addition, notwithstanding G.S. 58-78-20, up to four percent (4%) of the Fund may be used for additional staff and resources for the North Carolina Fire and Rescue Commission."

SECTION 2.2. Subsections (e) and (f) of G.S. 58-92-20 read as rewritten:

"(e) For each brand style listed in a certification, a manufacturer shall pay to the Commissioner a fee of two hundred fifty dollars (\$250.00). The Commissioner may annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, fire safety, and oversight activities required by this Article.

(f) There is established in the State treasury a separate, nonreverting fund to be known as the "Fire Safety Standard and Firefighter Protection Act Enforcement Fund." The fund shall consist of all certification fees submitted by manufacturers and shall, in addition to any other monies made available for such purpose, be available to the Commissioner solely to support processing, testing, enforcement, and oversight activities under this Article. For the purposes of this Article, fire safety shall include community education and outreach and the provision and installation of fire safety devices in high-risk and high-need locations throughout the State."

SECTION 2.3. The Office of State Fire Marshal, Department of Insurance, shall study, in consultation with the North Carolina State Firemen's Association, the North Carolina Association of Fire Chiefs, the North Carolina Association of Rescue and Emergency Medical Services, the North Carolina League of Municipalities, and the North Carolina Association of County Commissioners, and make recommendations regarding the issue of declining recruitment and retention of volunteer firefighters in North Carolina to the General Assembly on or before the convening of the 2018 Legislative Session. The recommendations shall include at least the following:

- (1) Assessment of existing programs, initiatives, and efforts to increase the number of volunteer firefighters protecting their communities across the State.
- (2) Assessment of other states' programs, initiatives, and efforts to increase the number of volunteer firefighters protecting their communities.
- (3) Consideration of financial incentive programs that may be offered to encourage increased volunteer firefighter participation rates, including tax incentives, rebates, or other initiatives.
- (4) The impact of current programs and viability of expansion of high school based programs providing firefighter training statewide.
- (5) Other issues, initiatives, or matters deemed relevant to consideration of and action on this issue by the Office of State Fire Marshal and its collaborators.
- (6) Recommendations for legislative action, if any, to address the issue of recruitment and retention of volunteer firefighters statewide.

PART III. ANTI-FRAUD AND CRIMINAL PROVISIONS

SECTION 3.1. G.S. 58-50-40(c) reads as rewritten:

"(c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of ~~a Class H felony~~ the following felony offense:

- (1) If the total value of losses suffered as a result of an insurance fiduciary's violation of subsection (b) of this section is one hundred thousand dollars (\$100,000) or more, the violation is a Class F felony.
- (2) If the total value of losses suffered as a result of an insurance fiduciary's violation of subsection (b) of this section is less than one hundred thousand dollars (\$100,000), the violation is a Class H felony."

SECTION 3.2.(a) G.S. 58-2-164 reads as rewritten:

"§ 58-2-164. Rate evasion fraud; prevention programs.

- (a) The following definitions apply in this section:
- (1) "Applicant" means one or more persons applying for the issuance or renewal of an auto insurance ~~policy~~policy on which the person or persons will be a named insured.
 - (2) "Auto insurance" means both nonfleet and other than nonfleet private passenger motor vehicle insurance.
 - (3) "~~Eligible applicant~~"-risk" means a person who is an eligible risk ~~under G.S. 58-37-1(4a)~~as defined in either G.S. 58-37-1(4) or G.S. 58-37-1(4a).
 - (4) "Insurer" means ~~a member of the North Carolina Rate Bureau~~an insurance company that is licensed to write and is writing auto insurance in this State.
 - (5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).
 - (5a) "Principal place of business" means the single physical location from which the majority of the essential operations of the applicant's business are directed and controlled. The location of a consultant, service agent, or attorney of the applicant shall not be sufficient to establish an applicant's principal place of business.
 - (6) "Private passenger motor vehicle" means a motor vehicle as defined in G.S. 58-40-10(1).
- (b) It shall be a Class 3 misdemeanor for any person who, with the intent to deceive an insurer, does any of the following:
- (1) ~~Present or cause~~Presents or causes to be presented a written or oral statement in support of an application for issuance of or amendment to a policy of auto insurance or for vehicle registration pursuant to G.S. 20-52(a)(4)~~G.S. 20-52(a)(4)~~ and (a)(5), knowing that the application contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.
 - (2) ~~Assist, abet, solicit, or conspire~~Assists, abets, solicits, or conspires with another person to prepare or make any written or oral statement that is intended to be presented to an insurer in connection with or in support of an application for issuance of or amendment to a policy of auto insurance or for vehicle registration pursuant to G.S. 20-52(a)(4) and (a)(5), if the person knows that the statement contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than one thousand dollars (\$1,000) for each violation.

(b1) It shall be a Class H felony for any applicant who, with the intent to deceive an insurer, knowingly violates G.S. 58-2-164(b) for the purpose of obtaining auto insurance covering one or more vehicles, the operation of which requires a Commercial Drivers License pursuant to G.S. 20-4.01(3c).

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than ten thousand dollars (\$10,000) for each violation.

(c) The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The insurer may take its own reasonable steps to verify residency or eligible risk status or may rely upon the agent verification of residency or eligible risk status to meet the insurer's verification obligations under this section. The agent shall retain copies of any items obtained under this section as required under the record retention rules adopted by the Commissioner and in accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section by obtaining from the applicant reliable proof of North Carolina residency ~~from the applicant or the~~ and the applicant's status as an eligible risk. ~~Reliable proof of residency or eligible risk includes but is not limited to:~~

(c1) To the extent relevant to a particular criterion for eligible risk status and for the purpose of obtaining nonfleet private passenger motor vehicle insurance, reliable proof of North Carolina residency or eligible risk status includes one or more of the following:

- ~~(1) A pay stub with the payee's address.~~
- ~~(2) A utility bill in the name of the applicant showing the address of the applicant payor.~~applicant's current North Carolina address.
- ~~(3) A lease for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.~~

- (4) A receipt for personal property taxes ~~paid~~ paid by the applicant within the preceding 12-month period and showing the applicant's current North Carolina address.
- (5) A receipt for real property taxes paid by the applicant to a North Carolina ~~locality~~ locality within the preceding 12-month period and showing the applicant's current North Carolina address.
- (6) ~~A monthly or quarterly financial statement from a North Carolina regulated financial institution.~~
- (7) A valid unexpired North Carolina driver's ~~license~~ license issued to the applicant and showing the applicant's current North Carolina address.
- (8), (9) Repealed by Session Laws 2015-294, s. 13, effective January 1, 2016, and applicable to insurance policies entered into on or after that date.
- (10) A valid North Carolina vehicle ~~registration~~ registration issued to the applicant and showing the applicant's current North Carolina address.
- (11) A valid military ID.
- (12) A valid student ID of the applicant for a North Carolina school or university.
- (13) A federal Income Tax Return filed by the applicant for the most recent prior filing period showing the applicant's name and current North Carolina address.
- (14) A homeowner's or renter's declarations page showing the applicant's current North Carolina address.

(c2) To the extent relevant to a particular criterion for eligible risk status and for the purpose of obtaining other than nonfleet private passenger motor vehicle insurance, reliable proof of North Carolina residency or eligible risk status includes two or more of the following:

- (1) A utility bill in the name of the applicant showing a North Carolina address for the principal place of business of the applicant.
- (2) A receipt for real property taxes paid by the applicant to a North Carolina locality within the preceding 12-month period and showing the applicant's current North Carolina address.
- (3) A valid North Carolina vehicle registration issued to the applicant and showing the applicant's current North Carolina address.
- (4) A federal Income Tax Return filed by the applicant for the most recent prior filing period showing the applicant's name and current North Carolina address.

...

(f) Every insurer shall maintain safeguards within its auto insurance business at the point of sale, renewal, and claim to identify misrepresentations by applicants regarding their ~~addresses~~ addresses, their principal places of business, and the places their motor vehicles are garaged. Identified misrepresentations are subject to the requirements of Article 2 of this Chapter.

(g) If an applicant provides false ~~and or~~ misleading information as ~~material~~ to the applicant's or any named insured's status as an eligible ~~applicant~~ risk and that fraudulent information makes the applicant or any named insured appear to be an eligible ~~applicant~~ risk when that person is in fact not an eligible ~~applicant~~ risk, the insurer may do any or all of the following:

- (1) Refuse to ~~issue~~ issue, amend, or endorse a policy.
- (2) Cancel or refuse to renew a policy that has been issued.
- (3) Deny coverage for any claim ~~arising out of bodily injury or property damage suffered by the applicant.~~ by the applicant for auto liability, comprehensive, or collision coverage. This subdivision does not apply to bodily injury or property damage claims of innocent third parties, parties to the extent of any minimum financial responsibility requirement of State or federal law.

(g1) Any motor vehicle liability policy may provide that the insured shall reimburse the insurer for any payment made under a policy of insurance if the issuance of the policy was induced by a knowing and material misrepresentation of facts relating to the insured's status as an eligible risk. For purposes of this subsection, a payment made shall include any sums paid for satisfaction, in whole or in part, of any judgment against the insured or for a reasonable settlement of a claim against the insured for bodily injury or property damage. A payment made

shall further include any costs or attorneys' fees incurred by the insurer in the adjustment, investigation, or defense of a claim.

~~(h) In a civil cause of action for recovery based upon a claim for which a defendant has been convicted under this section, the conviction under subsection (g1) of this section, a conviction of the defendant for a violation of G.S. 58-2-164(b) or (b1) may be entered into evidence against the defendant and shall establish the liability of the defendant as a matter of law for such damages, fees, or costs as may be proven. The court may award the prevailing party compensatory damages including but not limited to any costs, losses, expenses, and attorneys' fees incurred in connection with any false statement of eligible risk status made in an application for insurance or incurred in connection with any claim submitted under a policy obtained as a result of a false statement of status as an eligible risk, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations of this section, the court may award treble damages."~~

SECTION 3.2.(b) G.S. 58-37-1 reads as rewritten:

"§ 58-37-1. Definitions.

As used in this Article:

- ...
- (4) "Eligible risk," for the purpose of motor vehicle insurance other than nonfleet private passenger motor vehicle insurance, means:
- a. A person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State;
 - b. A person who has a valid driver's license in this State;
 - c. A person who is required to file proof of financial responsibility under Article 9A or 13A of Chapter 20 of the General Statutes in order to register his or her motor vehicle or to obtain a driver's license in this State;
 - d. A nonresident of this State who owns a motor vehicle registered ~~or~~ and principally garaged in this State; or
 - e. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies.

However, no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

- (4a) "Eligible risk," for the purpose of nonfleet private passenger motor vehicle insurance, means:
- a. A resident of this State who owns a motor vehicle registered or principally garaged in this State;
 - b. A resident of this State and who has a valid driver's license issued by this State;
 - c. A person who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her vehicle or to obtain a driver's license in this State;
 - d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State;
 - e. A nonresident of the State who is one of the following:
 1. A member of the Armed Forces of the United States stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
 2. The spouse of a nonresident member of the Armed Forces of the United States stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
 3. An out-of-state student who intends to return to his or her home state upon completion of his or her time as a student enrolled in school in this State; or

f. The State and its agencies and cities, counties, towns, and municipal corporations in this State and their agencies.

However, no person shall be deemed an eligible risk if timely payment or premium is not tendered or if there is a valid unsatisfied judgment of record against the person which the person has not been discharged from paying, for recovery of amounts due ~~for motor for:~~

1. ~~Motor vehicle insurance premiums and the person has not been discharged from paying the judgment or premiums; or~~
2. ~~Payments recoverable under a policy provision authorized by G.S. 58-2-164(g1).~~

Further, no person shall be deemed an eligible risk if the person does not furnish the information necessary to effect insurance.

...."

PART IV. CAPTIVE INSURANCE LAW PROVISIONS

SECTION 4.1.(a) G.S. 58-10-340 reads as rewritten:

"§ 58-10-340. Definitions.

The following definitions apply in this Part:

(1) ~~Affiliate or affiliated company. — Any person in the same corporate system as a parent, an industrial insured, a member organization, or a participant by virtue of common ownership, control, operation, or management. An "affiliate" of or person "affiliated" with a specific person. — Defined in G.S. 58-19-5.~~

...
(11) ~~Control, controlling, controlled by, or under common control with. — The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise; provided that such power is not the result of an official position or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist. Control. — Defined in G.S. 58-19-5. Notwithstanding this definition, for purposes of this Part, the fact that an SPFC exclusively provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control.~~

(12) ~~Controlled unaffiliated business. — A person meeting all of the following:~~
a. ~~The person is not an affiliate.~~
b. ~~The person has an existing contractual relationship with an affiliate.~~
c. ~~The person's risks are managed by a captive insurance company, an affiliate of a captive insurance company, a participant, or an affiliate of a participant in accordance with G.S. 58-10-470.~~

...
(20) ~~Industrial insured captive insurance company. — Any company that insures risks of the industrial insureds that comprise the industrial insured group and that may insure the risks of the affiliated companies of the industrial insureds and the risks of the controlled unaffiliated business of an industrial insured or its affiliated companies. insureds.~~

...
(28) ~~Parent. — An individual, corporation, limited liability company, partnership, association, or other entity, or individual. A person that directly or indirectly controls a captive insurance company.~~

(29) ~~Participant. — Any person and any affiliate or any controlled unaffiliated business of such person that is insured by a protected cell captive insurance company, where the losses of the participant are limited through a participant contract.~~

- ...
- (36) Pure captive insurance company. – Any company that insures risks of its ~~parent, parent or affiliated companies, controlled unaffiliated businesses, or any combination of these entities.companies.~~

...."

SECTION 4.1.(b) G.S. 58-10-345 reads as rewritten:

"§ 58-10-345. Licensing; authority; confidentiality.

(a) Any business entity, when permitted by its organizational documents, may apply to the Commissioner for a license to do any insurance comprised in G.S. 58-7-15; provided, however, that:

- (1) No pure captive insurance company shall insure any risks other than those of its parent and affiliated ~~companies or a controlled unaffiliated business or businesses.companies.~~
- (2) No association captive insurance company shall insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies.
- (3) No industrial insured captive insurance company shall insure any risks other than those of the industrial insureds that comprise the industrial insured group and those of their affiliated ~~companies, and those of the controlled unaffiliated business of an industrial insured or its affiliated companies.~~

...

(b) No captive insurance company shall transact any insurance business in this State unless:

- (1) It obtains a license from the Commissioner pursuant to subsection (c) of this section authorizing it to do insurance business in this State.
- (2) Its board of directors or committee of managers or, in the case of a reciprocal insurer, its subscribers' advisory committee holds at least one meeting each year in this State. A captive insurance company will be exempt from this board meeting requirement if the captive insurance company utilizes the services of at least two of the following North Carolina-based service providers:
 - a. Legal.
 - b. Accounting.
 - c. Actuarial.
 - d. Investment advisor.
 - e. Captive manager.
 - f. Other service providers acceptable to the Commissioner.
- (3) It maintains its principal place of business in this State.
- (4) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this State, provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served and such service shall be done in accordance with G.S. 58-16-30.

(c) In order to receive a license to issue policies of insurance as a captive insurance company in this State, an applicant business entity shall meet all of the following requirements:

- (1) The applicant business entity shall submit its organizational documents to the Commissioner. If the Commissioner approves the organizational documents, then the Commissioner shall issue a certificate to the applicant business entity certifying the Commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the certificate of approval issued by the Commissioner, and the required filing fees for organizational documents prescribed by North Carolina law to the Secretary of State for filing. Upon filing the organizational documents, the Secretary of State shall issue a certificate of filing to the applicant business entity. The applicant business entity shall submit a copy of the certificate of filing relative to the applicant business entity's organizational documents issued by the Secretary of State to the Commissioner.

- (2) The applicant business entity shall file a statement under oath of its president and secretary showing its financial condition.
- (3) The applicant business entity shall file its plan of operation.
- (4) The applicant business entity shall file other documents as required by the Commissioner.
- (5) The applicant business entity shall also file with the Commissioner evidence of all of the following:
 - a. ~~The amount and liquidity of its assets the captive insurance company is sufficient relative to the risks to be assumed insured.~~
 - b. The adequacy of the expertise, experience, and character of the person or persons who will manage it.
 - c. The overall soundness of its plan of operation.
 - d. The adequacy of the loss prevention programs of its insureds.
 - e. Such other factors deemed relevant by the Commissioner in ascertaining whether the applicant business entity will be able to meet its policy obligations.
- (6) No less than the amount required by G.S. 58-10-370, in a form acceptable to the Commissioner, shall be paid into the applicant business entity.
- (7) The applicant business entity shall submit to the Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the Commissioner may require.

...
 (g) The Commissioner is authorized to retain legal, financial, and ~~examination-audit~~ services from outside the Department, the costs of which shall be reimbursed by the ~~applicant-business entity~~. G.S. 58-2-160 shall apply to ~~examinations, audits, investigations, and processing~~ conducted under the authority of this section.

...
 (i) A business entity incorporated, formed, or organized under the laws of another jurisdiction that is licensed as a captive insurance company under the provisions of this Part shall have the privileges and be subject to the provisions of the laws of this State or the laws of such other jurisdiction, as applicable, under which such business entity is incorporated, formed, or organized. In the event of a conflict between the provisions of the laws of this State and the laws of such other jurisdiction under which such business entity is incorporated, formed, or organized, the provisions of this Part shall control.

SECTION 4.1.(c) Article 10 of Chapter 58 of the General Statutes is amended by adding a new section to read:
"§ 58-10-347. Provisional approval for a license.

(a) At the Commissioner's discretion, provisional approval for a license may be granted to an applicant business entity for a period not to exceed 90 days.

(b) An applicant business entity may petition the Commissioner to extend the provisional time provided the petition is received in writing not less than 10 days before expiration of the provisional time and provides sufficient detail to permit the Commissioner to make an informed decision.

(c) Extensions may be granted by the Commissioner for 30-day periods upon a showing by the applicant business entity of the reasons for requesting an extension and a determination by the Commissioner of good cause for the extension.

(d) As a condition precedent to provisionally approving a license under this section, the applicant business entity shall have filed an application required by this Part and the Commissioner shall have made a preliminary finding that the expertise, experience, and character of the person or persons who will control and manage the applicant business entity are acceptable.

(e) The Commissioner may limit the authority of any provisional licensee in any way deemed necessary.

(f) The Commissioner may rescind the provisional approval at any time if the Commissioner determines that the interests of insureds or the public are at risk.

(g) If the applicant business entity fails to complete the license application process, the provisional approval shall terminate automatically.

SECTION 4.1.(d) G.S. 58-10-350 reads as rewritten:

"§ 58-10-350. Commissioner use of consultants and other professionals.

The Commissioner may contract with consultants and other professionals to expedite and complete the application process, ~~examinations, audits,~~ and other regulatory activities required pursuant to this Part. Such contracts for financial, legal, ~~examinations, audits,~~ and other services shall not be subject to any of the following:

- (1) G.S. 114-2.3.
- (2) G.S. 147-17.
- (3) Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with rules and procedures adopted under those Articles concerning procurement, contracting, and contract review."

SECTION 4.1.(e) G.S. 58-10-355 reads as rewritten:

"§ 58-10-355. Organizational ~~examination-audit.~~

In addition to the processing of the application, an organizational investigation or ~~examination-audit~~ may be performed before an applicant business entity is licensed. Such investigation or ~~examination-audit~~ shall consist of a general survey of the applicant business entity's corporate records, including charters, bylaws, and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the Commissioner deems necessary."

SECTION 4.1.(f) G.S. 58-10-370 reads as rewritten:

"§ 58-10-370. Capital and surplus requirements.

(a) No applicant business entity shall be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

- (1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars (\$250,000) or such other amount determined by the Commissioner.
- (2) In the case of an association captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (4) In the case of a risk retention group, not less than one million dollars (\$1,000,000).
- (5) In the case of a protected cell captive insurance company, not less than two hundred fifty thousand dollars ~~(\$250,000)-(\$250,000)~~ or such other amount determined by the Commissioner.
- (6) In the case of a special purpose captive insurance company, not less than two hundred fifty thousand dollars (\$250,000) or such other amount determined by the Commissioner.

(b) The Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business to be transacted.

(c) Capital and surplus required by subsections (a) and (b) of this section shall be in the form of cash, securities approved by the Commissioner, a clean irrevocable letter of credit issued by a bank approved by the Commissioner, or other form approved by the Commissioner."

SECTION 4.1.(g) G.S. 58-10-380 reads as rewritten:

"§ 58-10-380. Formation of captive insurance companies.

...
(m) With the Commissioner's prior written approval, a captive insurance company may establish one or more separate accounts and may allocate to them amounts to provide for the insurance risks of certain of its parents, affiliates, ~~controlled unaffiliated businesses,~~ or members, as the case may be, subject to the following:

- (1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the captive insurance company.

...."

SECTION 4.1.(h) G.S. 58-10-390(a) reads as rewritten:

"§ 58-10-390. Conflict of interest.

(a) Each captive insurance company ~~chartered-licensed~~ in this State is required to adopt a conflict of interest statement for officers, directors, and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would

divert him or her from his or her duty to further the interests of the captive insurance company he or she represents, but this shall not preclude such person from being a director or officer in more than one insurance company."

SECTION 4.1.(i) G.S. 58-10-395 reads as rewritten:

"§ 58-10-395. ~~Change of business.~~ **Plan of operation change.**

(a) Any material change in a captive insurance company's ~~business plan~~ of operation that was filed with the Commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval from the Commissioner.

...."

SECTION 4.1.(j) G.S. 58-10-400 reads as rewritten:

"§ 58-10-400. **Insurance manager and intermediaries.**

No person shall act in or from this State as a managing general agent, producer, or reinsurance intermediary for captive insurance company business without the authorization of the Commissioner."

SECTION 4.1.(k) G.S. 58-10-405 reads as rewritten:

"§ 58-10-405. **Annual reports.**

(a) No captive insurance ~~companies~~ company shall be required to make any annual report to the Commissioner except as provided in this Part.

(b) Prior to March 15 of each year, each captive insurance company shall submit to the Commissioner a report of its financial condition on the preceding December 31, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the Commissioner requires, approves, or accepts the use of ~~statutory accounting principles~~ or other comprehensive basis of accounting. The Commissioner may require, approve, or accept any appropriate or necessary modifications of the ~~statutory accounting principles~~ or other comprehensive basis of accounting for the type of insurance and kinds of insurers to be reported upon. The Commissioner may require additional information to supplement such report. Except as otherwise provided, each risk retention group and association captive insurance company shall file its report in the form required by G.S. 58-2-165, and each risk retention group shall comply with the requirements set forth in G.S. 58-4-5. All other captive insurance companies shall report on forms adopted by the Commissioner. G.S. 58-10-345(f) shall apply to each report filed pursuant to this section. Branch captive insurance companies shall file the report required by this section unless otherwise required by G.S. 58-10-545. Special Purpose Financial Captive insurance companies shall report in accordance with G.S. 58-10-625.

...

(f) Extensions of the due date for filings required by this section may be granted by the Commissioner for 30-day periods upon a showing by the captive insurance company of the reasons for requesting an extension and determination by the Commissioner of good cause for the extension. The request for extension must be received in writing not less than 10 days before the due date and in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension."

SECTION 4.1.(l) G.S. 58-10-415 reads as rewritten:

"§ 58-10-415. **Annual audit and statement of actuarial opinion.**

...

(c) Captive insurance companies with less than one million two hundred thousand dollars (\$1,200,000) in written premium may make a written request for exemption from the annual audit requirement. Such request must be made at least 90 days prior to the captive insurance company's fiscal year-end or as otherwise required by the Commissioner. Requests will be considered on a case-by-case basis and may be subject to the Commissioner receiving an annual audit of the captive insurance company's parent ~~company~~ in lieu of the annual audit of the captive insurance company.

(c1) Extensions of the due dates for filings required by this section may be granted by the Commissioner for 30-day periods upon a showing by the captive insurance company ~~and its independent certified public accountant~~ of the reasons for requesting an extension and determination by the Commissioner of good cause for the extension. The request for extension must be received in writing not less than 10 days before the due date and in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c2) G.S. 58-10-345(f) shall apply to all information filed pursuant to this section.

(d) The annual audit shall consist of the following:

- (1) Annual audited financial report. – The annual audited financial report shall include the following:
 - a. Financial statements. – Financial statements shall be prepared in accordance with generally accepted accounting principles, unless the Commissioner requires, approves, or accepts the use of ~~statutory accounting principles or~~ other comprehensive basis of accounting, with useful or necessary modifications or adaptations required, approved, or accepted by the Commissioner, and shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants. The Commissioner may require that the financial statements be supplemented by additional information.
 - b. Notes to financial statements. – The notes to financial statements shall be those required by generally accepted accounting principles, or as otherwise approved by the Commissioner, and shall also include a reconciliation of differences, if any, between the audited financial report and the report of the captive insurance company's financial condition filed with the Commissioner in accordance with G.S. 58-10-405(b).
 - c. Related required auditor communications. – Copies of related required auditor communications in accordance with generally accepted auditing standards.
- (2) Certified public accountant's affirmation. – The certified public accountant shall furnish a written statement in the engagement letter or other document submitted to the captive insurance company that the certified public accountant is aware of and will comply with the responsibilities imposed by G.S. 58-10-420(b) and G.S. 58-10-420(c).

...."

SECTION 4.1.(m) G.S. 58-10-420 reads as rewritten:

"§ 58-10-420. Independent certified public accountants.

...

(c) A captive insurance company shall require its independent certified public accountant to make available for review by the Commissioner or his or her appointed agent the work papers prepared in the conduct of the audit of the captive insurance company. The captive insurance company shall require that the independent certified public accountant retain the audit work papers for a period of not less than five years after the period reported upon. The aforementioned review by the Commissioner shall be considered an ~~examination, audit,~~ and all working papers obtained during the course of such ~~examination, audit~~ shall be confidential. The captive insurance company shall require that the independent certified public accountant provide copies, in such form as the Commissioner deems appropriate, of any of the working papers which the Commissioner considers relevant. Such working papers may be retained by the Commissioner. "Work papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of captive insurance company records, or other documents prepared or obtained by the independent certified public accountant and the independent certified public accountant's employees in the conduct of their audit of the captive insurance company.

(d) The lead audit partner may not act in that capacity for more than five consecutive years. For purposes of this subsection, lead audit partner means the partner having primary responsibility for the audit. The person shall be disqualified from acting in that or similar capacity for the captive insurance company for a period of five consecutive years. A captive insurance company may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least 30 days before the end of the fiscal year. The Commissioner may consider the following factors in determining if the relief should be granted:

- (1) Number of partners, expertise of the partners, or the number of insurance clients in the firm; and
- (2) Premium volume of the captive insurance ~~company; or company.~~
- (3) ~~Number of jurisdictions in which the insurer transacts business.~~

...."

SECTION 4.1.(n) G.S. 58-10-430 reads as rewritten:

"§ 58-10-430. ~~Examinations-Audits.~~

(a) Whenever the Commissioner determines it to be prudent, the Commissioner shall ~~examine-audit~~ a captive insurance company's affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this Part. The expenses and charges of the ~~examination-audit~~ shall be paid by the captive insurance company.

(b) G.S. 58-2-160 shall apply to ~~examinations-audits~~ conducted under this section.

(c) All ~~examination-audit~~ reports, preliminary ~~examination-audit~~ reports or results, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an ~~examination-audit~~ made under this section are confidential, are not subject to subpoena, and may not be made public by the Commissioner or an employee or agent of the Commissioner. Nothing in this subsection shall prevent the Commissioner from using such information in furtherance of the Commissioner's regulatory authority under this Chapter. The Commissioner shall have the discretion to grant access to such information to public officials having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this State or any other state or agency of the federal government at any time only if the officials receiving the information agree in writing to maintain the confidentiality of the information in a manner consistent with this subsection.

(d) Risk retention groups are not subject to this section and shall instead be ~~examined audited~~ in accordance with the Examination Law, G.S. 58-2-131 through G.S. 58-2-134."

SECTION 4.1.(o) G.S. 58-10-435 reads as rewritten:

"§ 58-10-435. License suspension or revocation.

(a) The license of a captive insurance company may be suspended or revoked if the Commissioner finds, upon ~~examination-audit~~, hearing, or other evidence, that a captive insurance company has committed one or more of the violations described in subdivisions (1) through (7) of this subsection, or met any of the criteria in subdivisions (8) through (10) of this subsection, and that the suspension or revocation is in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this Chapter:

- (1) Insolvency or impairment of capital or surplus.
- (2) Failure to meet the requirements of G.S. 58-10-370.
- (3) Refusal or failure to submit an annual report, as required by this Part, or any other report or statement required by law or by lawful order of the Commissioner.
- (4) Failure to comply with its own charter, bylaws, or other organizational document.
- (5) Failure to submit to or pay the cost of an ~~examination-audit~~ or any legal obligation relative to an ~~examination-audit~~, as required by this Part.
- (6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders.
- (7) Failure otherwise to comply with the laws of this State.
- (8) Failure to commence business according to its plan of operation within two years of being licensed.
- (9) Failure to carry on insurance business in or from this State.
- (10) By request of the captive insurance company.

...."

SECTION 4.1.(p) G.S. 58-10-440(c) reads as rewritten:

"§ 58-10-440. Investment requirements.

...
(c) No captive insurance company or protected cell shall make a loan to or an investment in ~~its parent company, an affiliated company, a controlled unaffiliated business, affiliate~~ or a participant without prior written approval of the Commissioner, and any such loan or investment shall be evidenced by documentation approved by the Commissioner. Loans of minimum capital and surplus funds required by G.S. 58-10-370 are prohibited."

SECTION 4.1.(q) G.S. 58-10-470 is repealed.

SECTION 4.1.(r) Article 10 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-10-496. Waiver or modification.

The Commissioner may waive or modify any provision of this Part if such waiver or modification, in the Commissioner's opinion, is justified, based on sound actuarial, accounting, or business principles, and does not diminish the solvency prospects of the captive insurance company. No waiver or modification granted by the Commissioner pursuant to this section shall result in a greater regulatory burden than imposed by this Part prior to the exercise of such waiver or modification."

SECTION 4.1.(s) G.S. 58-10-505 reads as rewritten:

"§ 58-10-505. Additional filing requirements for applicant protected cell captive insurance companies.

In addition to the information required by G.S. 58-10-345(c), each applicant protected cell captive insurance company shall file with the Commissioner all of the following:

- (1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the Commissioner, and how it will report such experience to the Commissioner.
- (2) A statement acknowledging that all records of the applicant, including records pertaining to any protected cells, shall be made available for inspection or ~~examination~~ audit by the Commissioner or the Commissioner's designated agent.
- (3) All contracts or sample contracts between the applicant business entity and any participants.
- (4) A statement describing how expenses shall be allocated to each protected cell in a fair and equitable manner."

SECTION 4.1.(t) G.S. 58-10-510 reads as rewritten:

"§ 58-10-510. Establishment of protected cells.

(a) A protected cell captive insurance company licensed under this Part may establish and maintain one or more incorporated or unincorporated protected cells, to insure risks of one or more participants, subject to the following conditions:

- (1) A protected cell captive insurance company may establish one or more protected cells if the Commissioner has approved in writing a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company with respect to each protected cell. A plan of operation shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell, provided that the Commissioner may require additional information in the plan of operation.
- (2) Upon the Commissioner's written approval of the plan of operation, the protected cell captive insurance company may attribute insurance obligations with respect to its insurance business to the protected cell in accordance with the approved plan of operation.
- (3) A protected cell shall have its own distinct name or designation that shall include the words "protected cell" or "incorporated cell."
- (4) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.
- (5) Repealed.
- (6) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plans of operation and participant contracts approved by the Commissioner. Any attribution of assets between the general account and a protected cell shall be in cash or in readily marketable securities with established market ~~values~~ values unless otherwise approved by the Commissioner.

...
(11) In lieu of filing a separate Statement of Actuarial Opinion for a protected cell captive insurance company and each protected cell, a protected cell captive insurance company

may file a combined Statement of Actuarial Opinion which shall include a statement of actuarial opinion for each protected cell, and the core, if the core is retaining risk. The combined Statement of Actuarial Opinion shall include a supplemental schedule showing the loss and loss expense reserves for each protected cell, and the core, if the core is retaining risk. The loss and loss expense reserve reported in the supplemental schedule must equal the loss and loss expense reserve amount reported in the audited financial statement and the annual report submitted pursuant to this Part.

(m) Each protected cell captive insurance company shall notify the Commissioner in writing within 10 business days if the protected cell captive insurance company or any of its protected cells are of any protected cell that is impaired, insolvent, or otherwise unable to meet its claim or expense obligations.

...

(q) A protected cell of a protected cell captive insurance company may be transferred to another protected cell captive insurance company or may be converted into another captive insurance company upon the approval of a transfer agreement or conversion plan by the Commissioner. All assets and liabilities of the protected cell immediately before the transfer or conversion shall remain the assets and liabilities after the transfer or conversion. All actions and other legal proceedings which were pending by or against the protected cell immediately prior to the transfer or conversion may be continued by or against the protected cell or the captive insurance company into which the protected cell converts.

...."

SECTION 4.1.(u) G.S. 58-10-515(d) reads as rewritten:
"§ 58-10-515. Participants in a protected cell captive insurance company.

...

(d) Except as otherwise approved by the Commissioner, a participant shall insure only its own risks and the risks of its affiliates ~~and controlled unaffiliated businesses~~ through a protected cell captive insurance company."

SECTION 4.1.(v) G.S. 58-10-525 reads as rewritten:
"§ 58-10-525. Application of supervision, rehabilitation, and liquidation provisions to protected cell captive insurance companies.

(a) Except as otherwise provided in this Part, Article 30 of this Chapter shall apply to a protected cell captive insurance company and to each cell of a protected cell captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a protected cell or a protected cell captive insurance company, the Commissioner or receiver shall manage the assets and liabilities of the protected cell captive insurance company, including assets and liabilities attributed to protected cells, pursuant to this Part.

(c) Notwithstanding Article 30 of this Chapter:

(1) No assets of a protected cell shall be used to pay any expenses or claims other than those attributable to such protected cell.

(2) ~~A~~ Subject to G.S. 58-10-512(f), a protected cell captive insurance company's capital and surplus shall at all times be available to pay any expenses of, or claims against, the protected cell captive insurance company."

SECTION 4.1.(w) G.S. 58-10-550 reads as rewritten:
"§ 58-10-550. ~~Examination~~ Audit of a branch captive insurance company.

(a) Any ~~examination~~ audit of a branch captive insurance company pursuant to G.S. 58-10-430 shall be of branch business and branch operations only so long as the branch captive insurance company files annually with the Commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the Commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

(b) As a condition of licensure, an alien captive insurance company shall grant authority to the Commissioner for ~~examination~~ audit of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed."

SECTION 4.1.(x) G.S. 58-10-565 reads as rewritten:
"§ 58-10-565. Application requirements.

...

(d) In addition to the information required by subsection (c) of this section and by G.S. 58-10-585, when a protected cell is used, an applicant SPFC shall file with the Commissioner:

- (1) A business plan demonstrating how the applicant SPFC accounts for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the Commissioner and how the applicant will report the experience to the Commissioner.
- (2) A statement acknowledging that all records of the SPFC, including records pertaining to any protected cells, must be made available for inspection or ~~examination-audit~~ by the Commissioner.
- (3) All contracts or sample contracts between the SPFC and any counterparty related to each protected cell.
- (4) A description of the expenses allocated to each protected cell.

...

(h) The Commissioner may retain legal, financial, and ~~examination-audit~~ services from outside the Department to ~~examine-audit~~ and investigate the application, the cost of which may be charged against the applicant. The Commissioner also may use internal resources to ~~examine-audit~~ and investigate the application based upon an hourly rate for the services performed or the usual and customary fee charged by the financial services industry for similar work subject to a minimum fee of twelve thousand dollars (\$12,000), six thousand dollars (\$6,000) of which is payable upon filing of the application and the remainder upon licensure.

...."

SECTION 4.1.(y) G.S. 58-10-585 reads as rewritten:
"§ 58-10-585. Establishment of protected cell accounts.

...

(c) No SPFC contract with or attributable to a protected cell shall take effect without the Commissioner's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the Commissioner's prior written approval. The Commissioner may retain legal, financial, and ~~examination-audit~~ services from outside the Department to ~~examine-audit~~ and investigate the application for a protected cell, the cost of which may be charged against the applicant, or the Commissioner may use internal resources to ~~examine-audit~~ and investigate the application, the cost of which may be charged against the applicant, or both.

...."

SECTION 4.1.(z) G.S. 58-10-625 reads as rewritten:
"§ 58-10-625. Changes in plan of operation; filing of audit and statement of operation; examinations-audits.

...

(e) An SPFC shall maintain the SPFC's records in this State unless otherwise approved by the Commissioner and shall make its records available for ~~examination-audit~~ by the Commissioner at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the Commissioner may readily verify its financial statements and determine its compliance with this Part.

(f) All original books, records, documents, accounts, and vouchers shall be preserved and kept available in this State for the purpose of ~~examination-audit~~ and until authority to destroy or otherwise dispose of the records is secured from the Commissioner. The original records, however, may be kept and maintained outside this State if, according to a plan adopted by the management of the SPFC and approved by the Commissioner, the SPFC maintains suitable copies instead of the originals. The books or records may be photographed, reproduced on film, or stored and reproduced electronically."

PART V. ACOS PARTICIPATING IN MEDICARE PROGRAMS

SECTION 5. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-7. Certain accountable care organizations not subject to this Chapter.

This Chapter shall not apply to any accountable care organization approved by the Centers for Medicare and Medicaid Services (CMS) to participate in Medicare programs established under 42 U.S.C. § 1315a or 42 U.S.C. § 1395jjj. This exemption is limited to the activities performed by the accountable care organization pursuant to its agreement with CMS for

participation in Medicare programs established under 42 U.S.C. § 1315a or 42 U.S.C. § 1395jii."

PART VI. INSURANCE LAW AMENDMENTS, AS RECOMMENDED BY THE DEPARTMENT

SECTION 6.1. The Department shall be authorized to take appropriate action to plan for and establish a private flood insurance market for North Carolina, in the event that the federal government empowers the states to establish and operate such markets.

SECTION 6.2. Section 44.5(b) of S.L. 2015-264 is repealed.

SECTION 6.3. G.S. 58-56A-10(e) reads as rewritten:

"§ 58-56A-10. Civil Penalties for violations; administrative procedure.

...
(e) Upon petition of the Commissioner the court may order the pharmacy benefits manager who committed a violation specified in subsection (b) of this section to make restitution to the Department for ~~extraordinary administrative expenses, including expenses~~ under subsection (f) of this section, incurred in the investigation, hearing, and any appeals associated with the violation in such amount that would reimburse the agency for the expenses. The petition may be made at any time and also in any appeal of the Commissioner's order."

SECTION 6.4. G.S. 15A-1340.37(d) is repealed.

SECTION 6.5. G.S. 58-70-10 reads as rewritten:

"§ 58-70-10. Application to Commissioner for permit renewal.

Any person, firm, corporation or association desiring to renew a permit issued pursuant to G.S. 58-70-5 shall make application to the Commissioner of Insurance not less than 30 days prior to the expiration date of the then current permit. Such renewal applicant shall be entitled to a renewal permit upon submission to the Commissioner of Insurance of all the information as required by G.S. 58-70-5; provided, however, it shall be sufficient, wherever applicable, to reference the prior year's application if there has been no change as to any of the required information and it shall not be necessary to submit with a renewal application a new director's resolution. In addition, the applicant shall submit to the Commissioner a copy of a "continuation certificate" or paid receipt for renewal premiums for the collection agency bond for the year for which the renewal permit is applied. The application shall include a calculation in accordance with G.S. 58-70-20, and if the bond is increased, an endorsement by the surety. With a renewal application, the applicant shall submit a balance sheet for the last fiscal year ending prior to the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities and positive net worth of the applicant. In calculating its positive net worth under this section, an applicant is not required to include in its balance sheet liabilities from the purchase of stock by or in connection with the applicant's employee stock ownership plan that is qualified under 26 U.S.C. §§ 401(a) and 4975(e)(7) or to include in its balance sheet unallocated or unearned shares held in such a qualified employee stock ownership plan."

PART VII. EFFECTIVE DATE

SECTION 7. Section 1.1 of this act becomes effective October 1, 2017, and applies to accidents on or after that date. Section 1.2 of this act becomes effective October 1, 2017, and applies to policies issued, renewed, or amended on or after that date. Section 1.3(a) of this act becomes effective October 1, 2017, and applies to policies issued, renewed, or amended on or after that date. Sections 1.3(b) and 1.3(c) become effective October 1, 2017, and apply to filings submitted on or after that date. Sections 3.1, 3.2, and 6.4 of this act become effective December 1, 2016. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2016.

s/ Harry Brown
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:05 a.m. this 30th day of June, 2016