

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 380

Short Title: Holding Company Act.

(Public)

Sponsors: Representative Beard.

Referred to: Commerce.

February 27, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN AND UPDATE THE INSURER HOLDING
3 REGISTRATION AND DISCLOSURE ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 58 of the General Statutes is amended by adding a new
6 Article to read:

7 **“ARTICLE 43.**

8 **“INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT.**

9 **“§ 58-560. Findings; purpose; legislative intent.**

10 (a) The General Assembly finds that the public interest and the interests of
11 policyholders are or may be adversely affected when any of the following occur:

12 (1) Control of an insurer is sought by persons who would utilize such
13 control adversely to the interests of policyholders.

14 (2) Acquisition of control of an insurer would substantially lessen
15 competition or create a monopoly in the insurance business in this
16 State.

17 (3) An insurer that is part of a holding company system is caused to enter
18 into transactions or relationships with affiliated companies on terms
19 that are not fair and reasonable.

20 (4) An insurer pays dividends to shareholders that jeopardize the financial
21 condition of such insurer.

22 (b) The General Assembly declares that the policies and purposes of this Article
23 are to promote the public interest by doing all of the following:

- 1 (1) Requiring disclosure of pertinent information relating to changes in
2 control of an insurer.
- 3 (2) Requiring disclosure by an insurer of material transactions and
4 relationships between the insurer and its affiliates, including certain
5 dividends to shareholders paid by the insurer.
- 6 (3) Providing standards governing material transactions between an
7 insurer and its affiliates.

8 **"§ 58-561. Definitions.**

9 As used in this Article, unless the context requires otherwise, the following terms
10 have the following meanings:

- 11 (1) An 'affiliate' of or person 'affiliated' with a specific person is a person
12 that indirectly through one or more intermediaries or directly controls,
13 is controlled by, or is under common control with the person specified.
- 14 (2) 'Control', including the terms 'controlling', 'controlled by', and 'under
15 common control with', means the direct or indirect possession of the
16 power to direct or cause the direction of the management and policies
17 of a person, whether through the ownership of voting securities, by
18 contract other than a commercial contract for goods or
19 nonmanagement services, or otherwise, unless the power is the result
20 of an official position with or corporate office held by the person.
21 Control is presumed to exist if any person directly or indirectly owns,
22 controls, holds with the power to vote, or holds proxies representing,
23 ten percent (10%) or more of the voting securities of any other person.
24 This presumption may be rebutted by a showing made in the manner
25 provided by G.S. 58-565(j) that control does not exist in fact. The
26 Commission may determine, after furnishing all persons in interest
27 notice and opportunity to be heard and making specific findings of fact
28 to support such determination, that control exists in fact,
29 notwithstanding the absence of a presumption to that effect.
- 30 (3) 'Insurance holding company system' means an entity comprising two
31 or more affiliated persons, one or more of which is an insurer.
- 32 (4) 'Insurer' includes a person subject to Chapters 57 or 57B of the
33 General Statutes. 'Insurer' does not include (1) an agency, authority,
34 or instrumentality of the United States; any of its possessions and
35 territories; the Commonwealth of Puerto Rico; the District of
36 Columbia; nor a state or political subdivision of a state; nor (2)
37 fraternal benefit societies or fraternal orders.
- 38 (5) 'Person' means an individual, corporation, partnership, association,
39 joint stock company, trust, unincorporated organization, or any similar
40 entity or any combination of the foregoing acting in concert. 'Person'
41 does not include any joint venture partnership exclusively engaged in
42 owning, managing, leasing, or developing real or tangible personal
43 property.

1 (6) A 'security holder' of a specified person is one who owns any security
2 of such person, including common stock, preferred stock, debt
3 obligations, or any other security convertible into or evidencing the
4 right to acquire any of the foregoing.

5 (7) A 'subsidiary' of a specified person is an affiliate controlled by such
6 person indirectly through one or more intermediaries or directly.

7 (8) 'Voting security' includes any security convertible into or evidencing a
8 right to acquire a voting security.

9 **"§ 58-562. Subsidiaries of insurers.**

10 (a) Any domestic insurer, either by itself or in cooperation with one or more
11 persons, may organize or acquire one or more subsidiaries engaged in the following
12 kinds of business:

13 (1) Any kind of insurance business authorized by the jurisdiction in which
14 it is incorporated.

15 (2) Acting as an insurance broker or as an insurance agent for its parent or
16 for any of its parent's insurer subsidiaries.

17 (3) Investing, reinvesting, or trading in securities for its own account, that
18 of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

19 (4) Management of any investment company subject to or registered
20 pursuant to the federal Investment Company Act of 1940, as amended,
21 including related sales and services.

22 (5) Acting as a broker-dealer subject to or registered pursuant to the
23 federal Securities Exchange Act of 1934, as amended.

24 (6) Rendering investment advice to governments, government agencies,
25 corporations, or other organizations or groups.

26 (7) Rendering other services related to the operations of an insurance
27 business, including actuarial, loss prevention, safety engineering, data
28 processing, accounting, claims, appraisal, and collection services.

29 (8) Ownership and management of assets that the parent corporation could
30 itself own or manage.

31 (9) Acting as an administrative agent for a governmental instrumentality
32 that is performing an insurance function.

33 (10) Financing of insurance premiums, agents, and other forms of consumer
34 financing.

35 (11) Any other business activity that is reasonably ancillary to an insurance
36 business.

37 (12) Owning a corporation or corporations engaged or organized to engage
38 exclusively in one or more of the businesses specified in this section.

39 (b) In addition to investments in common stock, preferred stock, debt obligations,
40 and other securities permitted under all other sections of this Chapter, a domestic insurer
41 may also:

42 (1) Invest, in common stock, preferred stock, debt obligations, and other
43 securities of one or more subsidiaries, amounts that do not exceed the
44 lesser of ten percent (10%) of such insurer's admitted assets or fifty

1 percent (50%) of such insurer's surplus as regards policyholders,
2 provided that after such investments, the insurer's surplus as regards
3 policyholders will be reasonable in relation to the insurer's outstanding
4 liabilities and adequate to its financial needs. In calculating the
5 amount of such investments, investments in domestic or foreign
6 insurance subsidiaries shall be excluded, and there shall be included:
7 (i) total net monies or other consideration expended and obligations
8 assumed in the acquisition or formation of a subsidiary, including all
9 organizational expenses and contributions to capital and surplus of
10 such subsidiary whether or not represented by the purchase of capital
11 stock or issuance of other securities; and (ii) all amounts expended in
12 acquiring additional common stock, preferred stock, debt obligations,
13 and other securities, and all contributions to the capital or surplus, of a
14 subsidiary subsequent to its acquisition or formation;

15 (2) Invest any amount in common stock, preferred stock, debt obligation,
16 and other securities of one or more subsidiaries engaged or organized
17 to engage exclusively in the ownership and management of assets
18 authorized as investments for the insurer; provided that each such
19 subsidiary agrees to limit its investments in any asset so that such
20 investments will not cause the amount of the total investment of the
21 insurer to exceed any of the investment limitations specified in
22 subdivision (b)(1) of this section or in Article 6 of this Chapter
23 applicable to the insurer. For the purposes of this section, 'the total
24 investment of the insurer' includes: (i) any direct investment by the
25 insurer in an asset; and (ii) the insurer's proportionate share of any
26 investment in an asset by any subsidiary of the insurer, which shall be
27 calculated by multiplying the amount of the subsidiary's investment by
28 the percentage of the ownership of such subsidiary.

29 (3) With the approval of the Commissioner, invest any greater amount in
30 common stock, preferred stock, debt obligations, or other securities of
31 one or more subsidiaries; provided that after such investment the
32 insurer's surplus as regards policyholders will be reasonable in relation
33 to the insurer's outstanding liabilities and adequate to its financial
34 needs.

35 (c) Investments in common stock, preferred stock, debt obligations, or other
36 securities of subsidiaries made pursuant to subsection (b) of this section are not subject
37 to any of the otherwise applicable restrictions or prohibitions contained in this Chapter
38 applicable to such investments of insurers.

39 (d) Whether any investment pursuant to subsection (b) of this section meets the
40 applicable requirements of that subsection is to be determined, before such investment
41 is made, by calculating the applicable investment limitations as though the investment
42 had already been made, taking into account the then outstanding principal balance on all
43 previous investments in debt obligations, and the value of all previous investments in

1 equity securities as of the day they were made, net of any return of capital invested, not
2 including dividends.

3 (e) If an insurer ceases to control a subsidiary, it shall dispose of any investment
4 therein made pursuant to this section within three years from the time of the cessation of
5 control or within such further time as the Commissioner may prescribe, (i) unless after
6 cessation of control such investment meets the requirements for investment under any
7 other provision of this Chapter, or (ii) unless the Commissioner authorizes the insurer to
8 continue the investment.

9 **"§ 58-563. Acquisition of control of or merger with domestic insurer.**

10 (a) No person other than the issuer shall make a tender offer for or a request or
11 invitation for tenders of, or seek to acquire, or acquire, in the open market or otherwise,
12 any voting security of a domestic insurer, if, after the consummation thereof, such
13 person would, directly or indirectly (or by conversion or by exercise of any right to
14 acquire), be in control of such insurer, unless, at the time any such offer, request, or
15 invitation is made, or prior to the acquisition of such securities, such person has filed
16 with the Commissioner and has simultaneously sent to such insurer, a statement
17 containing the information required by this section and such offer, request, invitation, or
18 acquisition has been approved by the Commissioner in the manner hereinafter
19 prescribed. Provided, however, that the provisions of this paragraph do not apply to any
20 acquisition or proposed acquisition of a domestic insurer's voting securities acquired or
21 sought to be acquired that, when combined with all other voting securities of the
22 domestic insurer acquired directly or indirectly during the preceding 12 months by the
23 person in control and all affiliates of the person in control, do not exceed one percent
24 (1%) of any class or series of the domestic insurer's outstanding voting securities.

25 Further, no person shall enter into an agreement to merge with or otherwise acquire
26 control of a domestic insurer unless such agreement is conditioned upon the approval of
27 the Commissioner pursuant to this section. No such merger or other acquisition of
28 control shall be effective until a statement containing the information required by this
29 section has been filed with the Commissioner and all other provisions of this section
30 have been complied with and the merger or acquisition of control has been approved by
31 the Commissioner pursuant to this section.

32 For the purposes of this section a 'domestic insurer' includes any person controlling
33 a domestic insurer. Further, for the purposes of this section, 'person' does not include
34 any securities broker holding, in the usual and customary broker's function, less than
35 twenty percent (20%) of the voting securities of an insurance company or of any person
36 that controls an insurance company.

37 (b) The statement to be filed with the Commissioner under subsection (a) of this
38 section shall be made under oath or affirmation and shall contain the following
39 information:

- 40 (1) The name and address of each person by whom or on whose behalf the
41 merger or other acquisition of control referred to in subsection (a) of
42 this section is to be effected (hereinafter called 'acquiring party'), and:
43 (i) if such person is an individual, his principal occupation and all
44 offices and positions held during the past five years, and any

1 conviction of crimes other than minor traffic violations during the past
2 10 years; (ii) if such person is not an individual, a report of the nature
3 of its business operations during the past five years or for such lesser
4 period as such person and any predecessors thereof shall have been in
5 existence; an informative description of the business intended to be
6 done by such person and such person's subsidiaries; and a list of all
7 individuals who are or who have been selected to become directors or
8 executive officers of such person, or who perform or will perform
9 functions appropriate to such positions. Such list shall include for
10 each such individual the information required by sub-subdivision (1)(i)
11 of this subsection.

12 (2) The source, nature, and amount of the consideration used or to be used
13 in effecting the merger or other acquisition of control; a description of
14 any transaction wherein funds were or are to be obtained for any such
15 purpose, including any pledge of the insurer's stock, or the stock of any
16 of its subsidiaries or controlling affiliates; and the identity of persons
17 furnishing such consideration.

18 (3) Fully audited financial information as to the earnings and financial
19 condition of each acquiring party for the preceding five fiscal years of
20 each such acquiring party, or for such lesser period as such acquiring
21 party and any predecessors thereof have been in existence; and similar
22 unaudited information as of a date not earlier than 90 days prior to the
23 filing of the statement.

24 (4) Any plans or proposals that each acquiring party may have to liquidate
25 such insurer, to sell its assets or merge or consolidate it with any
26 person, or to make any other material change in its business or
27 corporate structure or management.

28 (5) The number of shares of any security referred to in subsection (a) of
29 this section that each acquiring party proposes to acquire; the terms of
30 the offer, request, invitation, agreement, or acquisition referred to in
31 subsection (a) of this section; and a statement as to the method by
32 which the fairness of the proposal was arrived at.

33 (6) The amount of each class of any security referred to in subsection (a)
34 of this section that is beneficially owned or concerning which there is a
35 right to acquire beneficial ownership by each acquiring party.

36 (7) A full description of any contracts, arrangements, or understandings
37 with respect to any security referred to in subsection (a) of this section
38 in which any acquiring party is involved, including transfer of any of
39 the securities, joint ventures, loan or option arrangements, puts or
40 calls, guarantees of loans, guarantees against loss or guarantees of
41 profits, division of losses or profits, or the giving or withholding of
42 proxies. Such description shall identify the persons with whom such
43 contracts, arrangements, or understandings have been entered into.

- 1 (8) A description of the purchase of any security referred to in subsection
2 (a) of this section during the 12 calendar months preceding the filing
3 of the statement, by any acquiring party, including the dates of
4 purchase, names of the purchasers, and consideration paid or agreed to
5 be paid therefor.
- 6 (9) A description of any recommendations to purchase any security
7 referred to in subsection (a) of this section made during the 12
8 calendar months preceding the filing of the statement, by any acquiring
9 party, or by anyone based upon interviews or at the suggestion of such
10 acquiring party.
- 11 (10) Copies of all tender offers for, requests, or invitations for tenders of,
12 exchange offers for, and agreements to acquire or exchange any
13 securities referred to in subsection (a) of this section, and any related
14 additional soliciting material that has been distributed.
- 15 (11) The term of any agreement, contract, or understanding made with or
16 proposed to be made with any third party in connection with any
17 acquisition of control of or merger with a domestic insurer, and the
18 amount of any fees, commissions, or other compensation to be paid to
19 the third party with regard thereto.
- 20 (12) Such additional information as the Commissioner may by rule
21 prescribe as necessary or appropriate for the protection of
22 policyholders of the insurer or in the public interest.
- 23 (3) If the person required to file the statement referred to in subsection (a) of this
24 section is a partnership, limited partnership, syndicate, or other group, the
25 Commissioner shall require that the information called for by subdivisions (1) through
26 (12) of this subsection be given with respect to each partner of such partnership or
27 limited partnership, each member of such syndicate or group, and each person who
28 controls such partner or member. If any such partner, member, or person is a
29 corporation or the person required to file the statement referred to in subsection (a) of
30 this section is a corporation, the Commissioner shall require that the information called
31 for by subdivisions (1) through (12) of this subsection be given with respect to such
32 corporation, each officer and director of such corporation, and each person who is,
33 directly or indirectly, the beneficial owner of more than ten percent (10%) of the
34 outstanding voting securities of such corporation.
- 35 If any material change occurs in the facts set forth in the statement filed with the
36 Commissioner and sent to such insurer pursuant to this section, an amendment setting
37 forth such change, together with copies of all documents and other material relevant to
38 such change, shall be filed with the Commissioner and sent to such insurer by the filer
39 within two business days after the person learns of such change.
- 40 (c) If any offer, request, invitation, agreement, or acquisition referred to in
41 subsection (a) of this section is proposed to be made by means of a registration
42 statement under the Federal Securities Act of 1933, in circumstances requiring the
43 disclosure of similar information under the Federal Securities Exchange Act of 1934, or
44 under any State law requiring similar registration or disclosure, the person required to

1 file the statement referred to in subsection (a) may utilize such documents in furnishing
2 the information called for by that statement.

3 (d) The Commissioner shall approve any merger or other acquisition of control
4 referred to in subsection (a) of this section unless, after a public hearing thereon, he
5 finds any of the following:

6 (1) After the change of control, the domestic insurer referred to in
7 subsection (a) of this section would not be able to satisfy the
8 requirements for the issuance of a license to write the kind or kinds of
9 insurance for which it is presently licensed.

10 (2) The effect of the merger or other acquisition of control would be
11 substantially to lessen competition in insurance or tend to create a
12 monopoly in this State.

13 (3) The financial condition of any acquiring party might jeopardize the
14 financial stability of the insurer or prejudice the interest of its
15 policyholders.

16 (4) Any plans or proposals that the acquiring party has to liquidate the
17 insurer, sell its assets or consolidate or merge it with any person, or to
18 make any other material change in its business or corporate structure
19 or management, are unfair and unreasonable to policyholders of the
20 insurer and not in the public interest.

21 (5) The competence, experience, and integrity of those persons who would
22 control the operation of the insurer are such that it would not be in the
23 interests of policyholders of the insurer and of the public to permit the
24 merger or other acquisition of control.

25 (6) The acquisition is likely to be detrimental or prejudicial to the
26 insurance-buying public.

27 (e) The public hearing referred to in subsection (d) of this section shall be held
28 within 120 days after the statement required by subsection (a) of this section is filed,
29 and at least 60 days notice thereof shall be given by the Commissioner to the person
30 filing the statement, to the insurer, and to such other persons as may be designated by
31 the Commissioner. The Commissioner shall make a determination as expeditiously as
32 is reasonably practicable after the conclusion of such hearing. At such hearing, the
33 person filing the statement, the insurer, any person to whom notice of hearing was sent,
34 and any other person whose interest may be affected thereby shall have the right to
35 present evidence, examine and cross-examine witnesses, and offer oral or written
36 arguments; and in connection therewith shall be entitled to conduct discovery
37 proceedings at any time after the statement is filed with the Commissioner pursuant to
38 this section and in the same manner as is presently allowed in the superior courts of this
39 State. In connection with discovery proceedings authorized by this section, the
40 Commissioner is authorized to issue such protective orders and other orders governing
41 the timing scheduling of discovery proceedings as might otherwise have been issued by
42 a Superior Court of this State in connection with a civil proceeding. In the event any
43 party fails to make reasonable and adequate response to discovery on a timely basis or
44 fails to comply with any order of the Commissioner with respect to discovery, the

1 Commissioner on his own motion or on motion of any other party or person may order
2 that the postponed or recessed, shall be convened or reconvened, as the case may be,
3 following proper completion of discovery and reasonable notice to the person filing the
4 statement, to the insurer, and to such other persons as may be designated by the
5 Commissioner.

6 (f) The Commissioner may retain, at the acquiring person's expense, any
7 attorneys, actuaries, economists, accountants, or other experts not otherwise a part of the
8 Commissioner's staff as may be reasonably necessary to assist the Commissioner in
9 reviewing the proposed acquisition of control.

10 (g) The expenses of mailing any notices and other materials required by this
11 section shall be borne by the person making the filing. As security for the payment of
12 such expenses, such person shall file with the Commissioner an acceptable bond or
13 other deposit in a amount to be determined by the Commissioner.

14 (h) The provisions of this section do not apply to any offer, request, invitation,
15 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not
16 having been made or entered into for the purpose and not having the effect of changing
17 or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended
18 within the purposes of this section.

19 (i) The following are violations of this section:

20 (1) The failure to file any statement, amendment, or other material
21 required to be filed pursuant to subsection (a) or (b) of this section; or

22 (2) The effectuation or any attempt to effectuate an acquisition of control
23 of or merger with a domestic insurer, unless the Commissioner has
24 given his approval thereto.

25 (j) The courts of this State are vested with jurisdiction over every person not
26 resident, domiciled, or authorized to do business in this State who files a statement with
27 the Commissioner under this section; and each such person is deemed to have
28 performed acts equivalent to and constituting an appointment by such person of the
29 Commissioner to be his true and lawful attorney upon whom may be served all legal
30 process in any action, suit, or proceeding arising out of violations of this section.
31 Copies of all such process shall be handled in accordance with the provisions of G.S.
32 58-153, 58-153.1, and 58-154.

33 **"§ 58-564. Waiver of requirements by Commissioner.**

34 Any provisions of this Article relating to the filing or production of data, documents,
35 statements, reports; or any other requirements, including requirements of hearings or
36 times of notices, may be waived by the Commissioner in his discretion, with the consent
37 of the domestic insurer, including any person controlling the domestic insurer.

38 **"§ 58-565. Registration of insurers.**

39 (a) Every insurer that is licensed to do business in this State and that is a member
40 of an insurance holding company system shall register with the Commissioner, except a
41 foreign insurer subject to registration requirements and standards adopted by statute or
42 regulation in the jurisdiction of its domicile that are substantially similar to those
43 contained in this section and G.S. 58-566(a). Such insurer shall also file a copy of its
44 registration statement and any amendments thereto in each state in which that insurer is

1 authorized to do business if requested by the insurance regulator of that state. Any
2 insurer that is subject to registration under this section shall register within 30 days after
3 it becomes subject to registration, and an amendment to the registration statement shall
4 be filed by March 1 of each year for any changes that may have occurred during the
5 previous calendar year; unless the Commissioner for good cause shown extends the time
6 for registration or filing, and then within such extended time. The Commissioner may
7 require any insurer that is a member of a holding company system that is not subject to
8 registration under this section to furnish a copy of the registration statement or other
9 information filed by such insurance company with the insurance regulator of its
10 domiciliary jurisdiction.

11 (b) Every insurer subject to registration shall file the registration statement on a
12 form prescribed by the Commissioner, which shall contain the following current
13 information:

- 14 (1) The bylaws, capital structure, general financial condition, ownership,
15 and management of the insurer and any person controlling the insurer.
- 16 (2) The identity and relationship of every member of the insurance
17 holding company system.
- 18 (3) The following agreements in force, and transactions currently
19 outstanding or that have occurred during the last calendar year
20 between such insurer and its affiliates or other third parties where
21 indicated:
 - 22 a. Loans, other investments, or purchases, sales or exchanges of
23 securities of the affiliates by the insurer or of the insurer by its
24 affiliates.
 - 25 b. Purchases, sales, or exchange of assets.
 - 26 c. Transactions not in the ordinary course of business.
 - 27 d. Guarantees or undertakings for the benefit of an affiliate or
28 other third party that result in an actual contingent exposure of
29 the insurer's assets to liability, other than insurance contracts
30 entered into in the ordinary course of the insurer's business.
 - 31 e. All management agreements, service contracts, and cost-sharing
32 arrangements.
 - 33 f. Reinsurance agreements.
 - 34 g. Dividends and other distributions to shareholders.
 - 35 h. Consolidated tax allocation agreements.
- 36 (4) Any pledge of the insurer's stock, including stock of any subsidiary or
37 controlling affiliate, for a loan made to any member of the insurance
38 holding company system.
- 39 (5) Other matters concerning transactions between registered insurers and
40 any affiliates as may be included from time to time in any registration
41 forms adopted or approved by the Commissioner.

42 (c) No information need be disclosed on the registration statement filed pursuant
43 to subsection (b) of this section if such information is not material for the purposes of
44 this section. Unless the Commissioner by rule or order provides otherwise, all sales,

1 purchases, exchanges, loans or extensions of credit, investments, or guarantees
2 involving one-half of one percent (1/2%) or less of an insurer's admitted assets as of the
3 31st day of December next preceding are not material for the purposes of this section.

4 (d) Subject to G.S. 58-566(b), each registered insurer shall report to the
5 Commissioner all dividends and other distributions to shareholders within 15 business
6 days following the declaration thereof.

7 (e) Any person within an insurance holding company system subject to
8 registration shall provide complete and accurate information to an insurer, where such
9 information is reasonably necessary to enable the insurer to comply with the provisions
10 of this Article.

11 (f) The Commissioner shall terminate the registration of any insurer that
12 demonstrates that it no longer is a member of an insurance holding company system.

13 (g) The Commissioner may require or allow two or more affiliated insurers
14 subject to registration under this section to file a consolidated registration statement.

15 (h) The Commissioner may allow an insurer that is authorized to do business in
16 this State and that is part of an insurance holding company system to register on behalf
17 of any affiliated insurer that is required to register under subsection (a) of this section
18 and to file all information and material required to be filed under this section.

19 (i) The provisions of this section do not apply to any insurer, information, or
20 transaction if and to the extent that the Commissioner by rule or order exempts the same
21 from the provisions of this section.

22 (j) Any person may file with the Commissioner a disclaimer of affiliation with
23 any authorized insurer, or such a disclaimer may be filed by such insurer or any member
24 of an insurance holding company system. The disclaimer shall fully disclose all
25 material relationships and bases for affiliation between such person and such insurer as
26 well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the
27 insurer shall be relieved of any duty to register or report under this section that may
28 arise out of the insurer's relationship with such person unless the Commissioner
29 disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only
30 after furnishing all parties in interest with notice and opportunity to be heard and after
31 making specific findings of fact to support such disallowance.

32 (k) The failure to file a registration statement or any summary of the registration
33 statement thereto required by this section within the time specified for such filing is a
34 violation of this section.

35 **"§ 58-566. Standards and management of an insurer within a holding company**
36 **system.**

37 (a) Transactions within a holding company system to which an insurer subject to
38 registration is a party are subject to all of the following standards:

39 (1) The terms shall be fair and reasonable.

40 (2) Charges or fees for services performed shall be reasonable.

41 (3) Expenses incurred and payment received shall be allocated to the
42 insurer in conformity with customary insurance accounting practices
43 consistently applied.

- 1 (4) The books, accounts, and records of each party to all such transactions
2 shall be so maintained as to clearly and accurately disclose the nature
3 and details of the transactions, including such accounting information
4 as is necessary to support the reasonableness of the charges or fees to
5 the respective parties.
- 6 (5) The insurer's surplus as regards policyholders following any dividends
7 or distributions to shareholder affiliates shall be reasonable in relation
8 to the insurer's outstanding liabilities and adequate to its financial
9 needs.
- 10 (b) The following transactions involving a domestic insurer and any person in its
11 holding company system may not be entered into unless the insurer has notified the
12 Commissioner in writing of its intention to enter into such transaction at least 30 days
13 prior thereto, or such shorter period as the Commissioner permits, and the
14 Commissioner has not disapproved it within such period:
- 15 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,
16 or investments, provided such transactions equal or exceed: (i) with
17 respect to nonlife insurers, the lesser of three percent (3%) of the
18 insurer's admitted assets or twenty-five percent (25%) of surplus as
19 regards policyholders; (ii) with respect to life insurers, three percent
20 (3%) of the insurer's admitted assets; each as of the 31st day of
21 December next preceding.
- 22 (2) Loans or extensions of credit to any person who is not affiliated, where
23 the insurer makes such loans or extensions of credit with the
24 agreement or understanding that the proceeds of such transactions, in
25 whole or insubstantial part, are to be used to make loans or extensions
26 of credit to, to purchase assets of, or to make investments in, any
27 affiliate of the insurer making such loans or extensions of credit
28 provided such transactions equal or exceed: (i) with respect to nonlife
29 insurers, the lesser of three percent (3%) of the insurer's admitted
30 assets or twenty-five percent (25%) of surplus as regards
31 policyholders; (ii) with respect to life insurers, three percent (3%) of
32 the insurer's admitted assets; each of the 31st day of December next
33 preceding.
- 34 (3) Reinsurance agreements or modifications thereto in which the
35 reinsurance premium or a change in the the insurer's liabilities equals
36 or exceeds five percent (5%) of the insurer's surplus as regards
37 policyholders, as of the 31st day of December next preceding,
38 including those agreements that may require as consideration the
39 transfer of assets from an insurer to a nonaffiliate, if an agreement or
40 understanding exists between the insurer and nonaffiliate that any
41 portion of such assets will be transferred to one or more affiliates of
42 the insurer.
- 43 (4) All management agreements that would place control of the insurer
44 outside of the insurance holding company system.

1 (5) All service contracts or cost-sharing arrangements wherein the annual
2 aggregate cost to the insurer would equal or exceed the amounts
3 specified in subdivision (1) of this subsection.

4 (6) Any material transactions, specified by rule, that the Commissioner
5 determines may adversely affect the interests of the insurer's
6 policyholders.

7 Nothing in this section authorizes or permits any transactions that, in the case of an
8 insurer, not a member of the same holding company system, would be otherwise
9 contrary to law. A domestic insurer may not enter into transactions that are part of a
10 plan or series of like transactions with persons within the holding company system if the
11 purpose of those separate transactions is to avoid the statutory threshold amount and
12 thus avoid the review that would otherwise occur. If the Commissioner determines that
13 such separate transactions were entered into over any 12-month period for such purpose,
14 he may exercise his authority under G.S. 58-570. The Commissioner, in reviewing
15 transactions pursuant to this subsection, shall consider whether the transactions comply
16 with the standards set forth in subsection (a) of this section and whether they may
17 adversely affect the interests of policyholders. The Commissioner shall be notified
18 within 30 days after any investment of a domestic insurer in any one corporation if, as a
19 result of any such investment, the total investment in such corporation by the insurance
20 holding company system exceeds ten percent (10%) of such corporation's voting
21 securities.

22 (c) No domestic insurer shall pay any extraordinary dividend or make any other
23 extraordinary distribution to its shareholders until (i) 30 days after the Commissioner
24 has received notice of the declaration thereof and has not within such period
25 disapproved such payment or (ii) the Commissioner has approved such payment within
26 such 30-day period.

27 For the purposes of this section, an 'extraordinary dividend' or 'extraordinary
28 distribution' includes any dividend or distribution of cash or other property, whose fair
29 market value together with that of other dividends or distributions made within the
30 preceding 12 months exceeds the greater of (i) ten percent (10%) of such insurer's
31 surplus as regards policyholders as of the 31st day of December next preceding, or (ii)
32 the net gain from operations of such insurer, if such insurer is a life insurer; or the
33 greater of (i) the net income or (ii) the net investment income, if such insurer is not a
34 life insurer, for the 12-month period ending the 31st day of December next preceding;
35 but does not include pro rata distributions of any class of the insurer's own securities. In
36 determining whether a dividend or distribution is extraordinary, an insurer may carry
37 forward income from the previous two calendar years that has not already been paid out
38 as dividends.

39 Notwithstanding any other provision of law, an insurer may declare an extraordinary
40 dividend or distribution that is conditional upon the Commissioner's approval thereof,
41 and such a declaration shall confer no rights upon shareholders until (i) the
42 Commissioner has approved the payment of such a dividend or distribution or (ii) the
43 Commissioner has not disapproved such payment within the 30-day period referred to
44 above.

1 (d) For the purposes of this Article, in determining whether an insurer's surplus
2 as regards policyholders is reasonable in relation to the insurer's outstanding liabilities
3 and adequate to its financial needs, all of the following factors, among others, shall be
4 considered:

- 5 (1) The size of the insurer as measured by its assets, capital and surplus,
6 reserves, premium writings, insurance in force, and other appropriate
7 criteria.
- 8 (2) The extent to which the insurer's business is diversified among the
9 several kinds of insurance.
- 10 (3) The number and size of risks insured in each kind of insurance.
- 11 (4) The extent of the geographic dispersion of the insurer's insured risks.
- 12 (5) The nature and extent of the insurer's reinsurance program.
- 13 (6) The quality, diversification, and liquidity of the insurer's investment
14 portfolio.
- 15 (7) The recent past and projected future trend in the size of the insurer's
16 surplus as regards policyholders.
- 17 (8) The surplus as regards policyholders maintained by other comparable
18 insurers.
- 19 (9) The adequacy of the insurer's reserves.
- 20 (10) The quality and liquidity of investments in affiliates. The
21 Commissioner may treat any such investment as a disallowed asset for
22 purposes of determining the adequacy of surplus as regards
23 policyholders whenever in his judgment such investment so warrants.

24 **"§ 58-567. Examination.**

25 (a) Subject to the limitation contained in this section and in addition to the
26 powers that the Commissioner has under other provisions of this Chapter relating to the
27 examination of insurers, the Commissioner also has the power to order any insurer
28 registered under G.S. 58-565 or any acquiring party to produce such records, books, or
29 other information in the possession of the insurer or its affiliates or the acquiring party
30 as are reasonably necessary to ascertain the financial condition of such insurer or
31 acquiring party or to determine compliance with this Chapter. In the event such insurer
32 or acquiring party fails to comply with such order, the commissioner shall have the
33 power to examine such insurer or its affiliates or such acquiring party to obtain such
34 information.

35 (b) The Commissioner may retain, at the expense of the registered insurer or
36 acquiring party that is being examined, such attorneys, actuaries, economists,
37 accountants, and other experts not otherwise a part of the Commissioner's staff as are
38 reasonably necessary to assist in the conduct of the examination under subsection (a) of
39 this section. Any persons so retained shall be under the direction and control of the
40 Commissioner and shall act in a purely advisory capacity.

41 (c) Each registered insurer or acquiring party producing records, books, or papers
42 for examination pursuant to subsection (a) of this section is liable for and shall pay the
43 expenses of such examination in accordance with G.S. 58-16 and G.S. 58-63.

1 (d) The Commissioner shall exercise his power under subsection (a) of this
2 section only if the examination of the insurer or acquiring party under other provisions
3 of this Chapter is inadequate or the interests of the policyholders of such insurer may be
4 adversely affected.

5 **"§ 58-568. Confidential treatment.**

6 All information, documents, and copies thereof obtained by or disclosed to the
7 Commissioner or any other person in the course of an examination or investigation
8 made pursuant to G.S. 58-567, and all information reported pursuant to G.S. 58-565 and
9 G.S. 58-566, shall be given confidential treatment; shall not be subject to subpoena; and
10 shall not be made public by the Commissioner, the NAIC, or any other person, except to
11 insurance regulators of other states, without the prior written consent of the insurer or
12 acquiring party to which it pertains unless the Commissioner, after giving the insurer
13 and its affiliates or the acquiring party that would be affected thereby notice and
14 opportunity to be heard, determines that the interest of the insurer's policyholders or the
15 public will be served by the publication thereof, in which event he may publish all or
16 any part thereof in such manner as he considers appropriate.

17 **"§ 58-569. Injunctions; prohibitions against the voting of securities; sequestration**
18 **of voting securities.**

19 (a) Whenever it appears to the Commissioner that any person has committed or is
20 about to commit a violation of this Article or of any rule or order of the Commissioner
21 under this Article, the Commissioner may apply to the Superior Court of Wake County
22 for an order enjoining such person from violating or continuing to violate this Article or
23 any such rule or order; and for such other equitable relief as the nature of the case and
24 the interest of the domestic insurer's policyholders or the public may require.

25 (b) No security that is the subject of any agreement or arrangement regarding
26 acquisition, or that is acquired or to be acquired, in contravention of the provisions of
27 this Article or of any rule or order of the Commissioner under this Article, may be voted
28 at any shareholder's meeting nor may be counted for quorum purposes; and any action
29 of shareholders requiring the affirmative vote of a percentage of shares may be taken as
30 though such securities were not issued and outstanding. No action taken at any such
31 meeting shall be invalidated by the voting of such securities, unless the action would
32 materially affect control of the insurer or unless the courts of this State have so ordered.
33 If an insurer or the Commissioner has reason to believe that any security of the insurer
34 has been or is about to be acquired in contravention of the provisions of this Article or
35 of any rule or order issued by the Commissioner under this Article, the insurer or the
36 Commissioner may apply to the Superior Court of Wake County to enjoin any offer,
37 request, invitation, agreement, or acquisition made in contravention of G.S. 58-563 or
38 any rule or order of the Commissioner under that section to enjoin the voting of any
39 security so acquired, to void any vote of such security already cast at any meeting of
40 shareholders, and for such other equitable relief as the nature of the case and the interest
41 of the insurer's policyholders or the public may require.

42 (c) In any case where a person has acquired or is proposing to acquire any voting
43 securities in violation of this Article or any rule or order of the Commissioner under this
44 Article, the Superior Court of Wake County may, on such notice as the court considers

1 appropriate and upon the application of the insurer or the Commissioner, seize or
2 sequester any voting securities of the insurer owned directly or indirectly by such
3 person, and issue such order with respect thereto as may be appropriate to effectuate the
4 provisions of this Article

5 Notwithstanding any other provisions of law, for the purposes of this Article the
6 sites of the ownership of the securities of domestic insurers are in this State.

7 **"§ 58-570. Sanctions.**

8 (a) Any person failing, without just cause, to file any registration statement as
9 required in this Article shall pay, after notice and hearing, civil penalty of one hundred
10 dollars (\$100.00) for each day's delay, not to exceed a total penalty of one thousand
11 dollars (\$1,000), to the Commissioner, who shall forward the clear proceeds to the
12 General Fund of this State.

13 (b) Every director or officer of an insurance holding company system who
14 knowingly and willfully violates, participates in, or assents to, or who knowingly and
15 willfully permits any of the officers or agents of the insurer to engage in transactions or
16 make investments that have not been properly reported or submitted pursuant to G.S.
17 58-565(a), G.S. 58-566(b), or G.S. 58-566(c), or that violate this Article, shall pay, in
18 his individual capacity, after notice and hearing, a civil penalty of one hundred dollars
19 (\$100.00) per violation, not to exceed a total penalty of one thousand dollars (\$1,000),
20 to the Commissioner, who shall forward the clear proceeds to the General Fund of this
21 State.

22 (c) Whenever it appears to the Commissioner that any insurer subject to this
23 Article or any director, officer, employee, or agent thereof has engaged in any
24 transaction or entered into a contract that is subject to G.S. 58-566 and that would not
25 have been approved had such approval been requested, the Commissioner may order the
26 insurer to immediately cease and desist from any further activity under that transaction
27 or contract. After notice and hearing the Commissioner may also order the insurer to
28 void any such contracts and restore the status quo if such action is in the best interest of
29 the policyholders, creditors, or the public.

30 (d) Whenever it appears to the Commissioner that any insurer or any director,
31 officer, employee, or agent thereof has knowingly and willfully committed a violation
32 of this Article, the Commissioner may cause criminal proceedings to be instituted by the
33 Superior Court of Wake County against such insurer or the responsible director, officer,
34 employee, or agent thereof. Any insurer that knowingly and willfully violates this
35 Article may be fined not more than one thousand dollars (\$1,000). Any individual who
36 knowingly and willfully violates this Article is guilty of a Class J felony and is subject
37 to a fine in his individual capacity, imprisonment, or both, in the discretion of the court.

38 (e) Any officer, director, or employee of an insurance holding company system
39 who knowingly and willfully subscribes to or makes or causes to be made any false
40 statements or false reports or false filings with the intent to deceive the Commissioner in
41 the performance of his duties under this Article, is guilty of a Class J felony, and is
42 subject to a fine, imprisonment, or both, in the discretion of the court. Any fines
43 imposed shall be paid by the officer, director, or employee in his individual capacity.

44 **"§ 58-571. Receivership.**

1 Whenever it appears to the Commissioner that any person has committed a violation
2 of this Article that so impairs the financial condition of a domestic insurer as to threaten
3 insolvency or make the further transaction of business by it hazardous to its
4 policyholders, creditors, shareholders, or the public, then the Commissioner may
5 proceed as provided in G.S. 1-507.1 and Article 17A of this Chapter.

6 **"§ 58-572. Recovery.**

7 (a) If an order for liquidation or rehabilitation of a domestic insurer has been
8 entered, the receiver appointed under such order has a right to recover on behalf of the
9 insurer, (i) from any parent corporation or holding company or person or affiliate who
10 otherwise controlled the insurer, the amount of distributions (other than distributions of
11 shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any
12 payment in the form of a bonus, termination settlement, or extraordinary lump sum
13 salary adjustment made by the insurer or its subsidiary or subsidiaries to a director,
14 officer, or employee, where the distribution or payment pursuant to (i) or (ii) above is
15 made at any time during the one year preceding the petition for liquidation or
16 rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and
17 (d) of this section.

18 (b) No such distribution is recoverable if the parent or affiliate shows that when
19 paid such distribution was lawful and reasonable, and that the insurer did not know and
20 could not reasonably have known that such distribution might adversely affect the
21 ability of the insurer to fulfill its contractual obligations.

22 (c) Any person that was a parent corporation or holding company or a person that
23 otherwise controlled the insurer or affiliate at the time such distributions were paid is
24 liable up to the amount of distributions or payments under subsection (a) of this section
25 such person received. Any person who otherwise controlled the insurer at the time such
26 distributions were declared is liable up to the amount of distributions he would have
27 received if they had been paid immediately. If two or more persons are liable with
28 respect to the same distributions, they are jointly and severally liable.

29 (d) The maximum amount recoverable under this section is the amount needed in
30 excess of all other available assets of the insurer to pay its contractual obligations and to
31 reimburse any guaranty funds.

32 (e) To the extent that any person liable under subsection (c) of this section is
33 insolvent or otherwise fails to pay claims due from it pursuant to that subsection, its
34 parent corporation, holding company, or person who otherwise controlled it at the time
35 that the distribution was paid, are jointly and severally liable for any resulting
36 deficiency in the amount recovered from such parent corporation or holding company or
37 person who otherwise controlled it.

38 **"§ 58-573. Revocation, suspension, or nonrenewal of insurer's license.**

39 Whenever it appears to the Commissioner that any person has committed a violation
40 of this Article that makes the continued operation of an insurer contrary to the interests
41 of policyholders or the public, the Commissioner may, after giving notice and an
42 opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license to do
43 business in this State for such period as he finds is required for the protection of

1 policyholders or the public. Any such determination shall be accompanied by specific
2 findings of fact and conclusions of law.

3 **"§ 58-574. Judicial review; mandatory injunction or writ of mandamus.**

4 (a) Any person aggrieved by any order made by the Commissioner pursuant to
5 this Article may appeal in accordance with G.S. 58-9.3.

6 (b) Any person aggrieved by any failure of the Commissioner to act or make a
7 determination required by this Article may petition the Superior Court of Wake County
8 for a mandatory injunction or a writ of mandamus directing the Commissioner to act or
9 make such determination forthwith."

10 Sec. 2. Article 12A of Chapter 58 of the General Statutes is repealed.

11 Sec. 3. G.S. 58-86.3 reads as rewritten:

12 **"§ 58-86.3. Exchange of securities.**

13 ~~Any domestic insurance company with capital stock (hereinafter referred to as~~
14 ~~"domestic company") may adopt a plan of exchange providing for the exchange by its~~
15 ~~shareholders of their stock in the domestic company for (i) shares of stock issued by any~~
16 ~~other domestic stock insurance company or other domestic stock corporation organized~~
17 ~~or reorganized under the laws of this State—such other corporation being hereinafter~~
18 ~~referred to as the "acquiring corporation"; (ii) other securities issued by the acquiring~~
19 ~~corporation; (iii) cash; (iv) other consideration; (v) any combination of such stock, such~~
20 ~~other securities, cash or other consideration. For the purpose of this Article, a "domestic~~
21 ~~company" or "domestic stock insurance company" shall mean a business corporation or a~~
22 ~~stock insurance company, respectively, organized and existing under the laws of the~~
23 ~~State of North Carolina.—Any domestic stock insurance company may adopt a plan of~~
24 exchange providing for the exchange by its shareholders of their stock in the domestic
25 company for shares of stock issued by any other stock insurance company or other stock
26 corporation (hereinafter referred to as the 'acquiring corporation'); other securities
27 issued by the acquiring corporation; cash; other consideration; or any combination
28 thereof. For the purpose of this Article, 'domestic stock insurance company' means a
29 stock insurance company organized and existing under the laws of this State."

30 Sec. 4. In the event any provision of this act is held to be invalid by any court
31 of competent jurisdiction, the court's holding as to that provision shall not affect the
32 validity or operation of other provisions of this act; and to that end the provisions of this
33 act are severable.

34 Sec. 5. This act is effective upon ratification.