

Part 9. Captive Insurance Companies.  
Subpart 1. General Provisions.

**§ 58-10-335. Purpose.**

(a) This Part shall be known and may be cited as the "North Carolina Captive Insurance Act."

(b) The purpose of this Part is to establish the procedures for the organization and regulation of the operations of captive insurance companies transacting insurance business within this State and thereby promote the general welfare of the people of this State.

**§ 58-10-340. Definitions.**

The following definitions apply in this Part:

- (1) An "affiliate" or person "affiliated" with a specific person. – Defined in G.S. 58-19-5.
- (2) Alien. - An alien company as defined in G.S. 58-1-5.
- (3) Alien captive insurance company. - Any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in such jurisdiction.
- (4) Association. - Any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities that meets the criteria set forth in either sub-subdivision a. or b. of this subdivision:
  - a. The member organizations of the association or the association itself, either alone or in conjunction with some or all of the member organizations, are described by any of the following:
    1. Owning, controlling, or holding with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer.
    2. Having complete voting control over an association captive insurance company incorporated as a mutual insurer.
    3. Constituting all of the subscribers of an association captive insurance company formed as a reciprocal insurer.
    4. Having complete voting control over an association captive insurance company formed as a limited liability company.
  - b. Each member organization of the association is one of the following:
    1. A not-for-profit corporation, nonprofit association, or similar nonprofit organization.
    2. An entity or organization exempt from taxation under Section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c).
    3. A municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity, whether organized by local act or public act of the General Assembly, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district or other public body generally classified as a governmental body or governmental entity. This sub-sub-subdivision shall be liberally construed.

- (5) Association captive insurance company. - Any company that insures risks of the member organizations of an association, and that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself.
- (6) Branch business. - Any insurance business transacted by a branch captive insurance company in this State.
- (7) Branch captive insurance company. - Any alien captive insurance company licensed by the Commissioner to transact the business of insurance in this State through a business unit with a principal place of business in this State. A branch captive insurance company is a pure captive insurance company with respect to operations in this State, unless otherwise permitted by the Commissioner.
- (8) Branch operations. - Any business operations of a branch captive insurance company in this State.
- (9) Captive insurance company. - Any pure captive insurance company, association captive insurance company, industrial insured captive insurance company, risk retention group, protected cell captive insurance company, special purpose captive insurance company, or special purpose financial captive insurance company formed or licensed under this Part.
- (10) Commissioner. - Defined in G.S. 58-1-5.
- (11) 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) Repealed by Session Laws 2016-78, s. 4.1.(a), effective June 30, 2016.
- (12a) Core. - A protected cell captive insurance company, excluding its protected cells.
- (13) Counterparty. - An SPFC's parent or affiliated company or a ceding insurer to the SPFC contract. A nonaffiliated company may be designated a counterparty, but that designation is subject to the prior approval of the Commissioner.
- (14) Court. - Defined in G.S. 58-30-10.
- (15) Department. - Defined in G.S. 58-1-5.
- (16) General account. - All assets and liabilities of a protected cell captive insurance company not attributable to a protected cell.
- (17) Incorporated protected cell. - A protected cell that is organized as a corporation or other legal entity separate from the protected cell captive insurance company of which it is a part.
- (17a) Impairment. - When the assets of a captive insurance company or protected cell are less than the sum of its liabilities and required minimum capital and surplus.
- (19) Industrial insured. - An insured that meets all of the following:
  - a. It procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer.
  - b. Its aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000).
  - c. It has at least 25 full-time employees.
- (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.

- (21) Industrial insured group. - Any group of industrial insureds that collectively are described by any of the following:
- a. Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer.
  - b. Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer.
  - c. Constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer.
  - d. Have complete voting control over an industrial insured captive insurance company formed as a limited liability company.
- (22) Insurance securitization or securitization. - A transaction or a group of related transactions which meet the requirements of sub-subdivisions a. and b. of this subdivision:
- a. The transactions include capital market offerings that are effected through related risk transfer instruments and facilitating administrative agreements where all or part of the result of such transactions is used to fund the SPFC's obligations under a reinsurance contract with a ceding insurer and by which one of the following occur:
    1. Proceeds are obtained by a SPFC, directly or indirectly, through the issuance of securities by the SPFC or any other person.
    2. All of the following occur: (i) a person provides one or more letters of credit or other assets for the benefit of the SPFC; (ii) the Commissioner authorizes the SPFC to treat such letters of credit or other assets as admitted assets for purposes of the SPFC's annual report; and (iii) all or any part of such proceeds, letters of credit, or assets, as applicable, are used to fund the SPFC's obligations under a reinsurance contract with a ceding insurer.
  - b. The transactions do not include the issuance of a letter of credit for the benefit of the Commissioner to satisfy all or part of the SPFC's capital and surplus requirements under G.S. 58-10-575.
- (23) Member organization. - Any individual, corporation, limited liability company, partnership, association, or other entity that belongs to an association.
- (24) Mutual corporation. - A corporation organized without stockholders and includes a nonprofit corporation with members.
- (25) Mutual insurer. - A company owned by its policyholders where no stock is available for purchase.
- (26) NAIC. - Defined in G.S. 58-1-5.
- (27) Organizational documents. - The documents that must be submitted pursuant to North Carolina law in order to legally form a business in this State or to obtain a license to transact business in this State.
- (28) Parent. - A person that directly or indirectly controls a captive insurance company.
- (29) Participant. - Any person and any affiliate 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.
- (30) Participant contract. - A contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each such

- participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.
- (31) Person. - Defined in G.S. 58-1-5.
  - (32) Protected cell. - Either of the following:
    - a. A separate account established by a protected cell captive insurance company licensed under this Part, in which assets and liabilities are segregated and insulated by means of this Part from the remainder of the protected cell captive insurance company's assets and liabilities, in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company, with respect to the participants as set forth in the participant contracts.
    - b. A separate account established and maintained by an SPFC for one SPFC contract and the accompanying insurance securitization with a counterparty.
  - (33) Protected cell assets. - All assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.
  - (34) Protected cell captive insurance company. - Any captive insurance company meeting all of the following:
    - a. The minimum capital and surplus required by this Part are provided by one or more sponsors.
    - b. The company is licensed under this Part.
    - c. The company insures the risks of separate participants through participant contracts.
    - d. The company funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.
  - (35) Protected cell liabilities. - All liabilities and other obligations identified with and attributed to a specific protected cell of a protected cell captive insurance company.
  - (36) Pure captive insurance company. - Any company that insures risks of its parent or affiliated companies.
  - (37) Risk retention group. - A captive insurance company organized under the laws of this State pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901, et seq., as amended, as a stock or mutual corporation or as a reciprocal or other limited liability entity. Risk retention groups formed under this Part are subject to all applicable insurance laws including, but not limited to, any applicable provisions in Articles 1, 2, 3, 7, 9, 10, 12, 19, 22, 33, and 34 of this Chapter.
  - (38) Securities. - Those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.
  - (38a) Special purpose captive insurance company. - A captive insurance company that is formed or licensed under this Part that does not meet the definition of any other type of captive insurance company defined in this section and is designated as a special purpose captive insurance company by the Commissioner.
  - (39) SPFC or Special Purpose Financial Captive. - A captive insurance company that has received a license from the Commissioner for the limited purposes provided for in this Part.

- (40) SPFC contract. - A contract between the SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business.
- (41) SPFC securities. - The securities issued by an SPFC.
- (42) Sponsor. - Any person that is approved by the Commissioner to provide all or part of the capital and surplus required by this Part and to organize and operate a protected cell captive insurance company.
- (43) Surplus note. - An unsecured subordinated debt obligation deemed to be a surplus certificate under this Part and otherwise possessing characteristics consistent with paragraph 3 of the NAIC's Statement of Statutory Accounting Principles No. 41, as amended.

**§ 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.
- (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, those of their affiliated companies.
- (4) No risk retention group shall insure any risks other than those of its members and owners.
- (5) No captive insurance company shall provide personal motor vehicle or homeowner's insurance coverage or any component of those coverages on a direct basis.
- (6) No captive insurance company shall accept or cede reinsurance except as provided in G.S. 58-10-445 and G.S. 58-10-605.
- (7) No captive insurance company shall provide accident and health insurance on a direct basis.
- (8) No captive insurance company shall provide workers' compensation and employer's liability insurance on a direct basis.
- (9) No captive insurance company shall provide life insurance or annuities on a direct basis.
- (10) A special purpose captive insurance company may provide insurance or reinsurance or both for risks as approved by the Commissioner.

(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 liquidity of the captive insurance company is sufficient relative to the risks to be 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.
- (d) Whenever a captive insurance company desires to amend the organizational documents submitted pursuant to subdivision (c)(1) of this section, the company shall submit the amended organizational documents to the Commissioner. If the Commissioner approves the amendment, then the Commissioner shall issue a certificate to the company certifying the

Commissioner's approval. The company 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 in 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 company. The company shall submit a copy of the certificate of filing relative to the company's organizational documents issued by the Secretary of State to the Commissioner.

(e) If a captive insurance company makes any subsequent material change to any item in the description submitted pursuant to subdivision (c)(7) of this section, then the captive insurance company shall submit an appropriate revision to the Commissioner for approval and shall not offer any additional kinds of insurance until a revision of such description is approved by the Commissioner. The captive insurance company shall inform the Commissioner of any material change in rates within 30 days of the adoption of such change.

(f) Information submitted pursuant to this section is confidential and may be made public by the Commissioner or the Commissioner's designee only upon an order of a court of competent jurisdiction except:

- (1) This subsection shall not apply to any risk retention group.
- (2) The Commissioner shall have the discretion to disclose such information to a public official having jurisdiction over the regulation of insurance in another state, provided that:
  - a. The public official agrees in writing to maintain the confidentiality of such information; and
  - b. The laws of the state in which the public official serves require the information to be and to remain confidential.
- (3) Organizational documents filed with the Secretary of State shall continue to be nonconfidential public records in the Secretary of State's office.

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

(h) If the Commissioner is satisfied that the documents and statements filed by an applicant business entity comply with this section, then the Commissioner shall grant a license authorizing it to do insurance business in this State.

(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.

#### **§ 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.

**§ 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, audits, and other regulatory activities required pursuant to this Part. Such contracts for financial, legal, 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.

**§ 58-10-355. Organizational audit.**

In addition to the processing of the application, an organizational audit may be performed before an applicant business entity is licensed. Such investigation or audit shall consist of a general review 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.

**§ 58-10-360. Designation of captive manager.**

Before licensing, the applicant business entity shall report in writing to the Commissioner the name and address of any captive manager designated to manage the captive insurance company. The Commissioner shall approve the captive manager and may require the submission of additional information regarding the proposed captive manager in a form and manner as the Commissioner may designate.

**§ 58-10-365. Names of companies.**

No applicant business entity or captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in this State nor any name likely to mislead the public. Any name adopted by an applicant business entity or a captive insurance company shall comply with the requirements of State law.

**§ 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) 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.

**§ 58-10-375. Dividends and distributions.**

No captive insurance company shall pay a dividend or other distribution from capital or surplus without the prior approval of the Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the Commissioner. A captive insurance company may otherwise make such distributions as are in conformity with its purposes and approved by the Commissioner.

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

(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

(b) An association captive insurance company, an industrial insured captive insurance company, or a risk retention group may be any of the following:

- (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (2) Incorporated as a mutual corporation.
- (3) Organized as a reciprocal insurer in accordance with Article 15 of this Chapter.
- (4) Organized as a manager-managed limited liability company.

(b1) A special purpose captive insurance company may be organized and operated in any form of business organization authorized by the Commissioner.

(c) Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.

(d) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(e) In the case of a captive insurance company formed as a corporation, at least one of the members of the board of directors shall be a resident of this State. In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this State. In the case of a captive insurance company formed as a limited liability company, at least one of the managers shall be a resident of this State.

(f) Captive insurance companies formed as corporations, limited liability companies, partnerships, or as nonprofit corporations under this Part shall have the privileges provided in

and be subject to all State statutes and laws, as applicable, provided that this Part shall control in the event of a conflict.

(g) Mergers, consolidations, conversions, mutualizations, acquisitions, redomestications, or other similar transactions of captive insurance companies shall be subject to the same provisions of this Chapter applicable to traditional insurance companies, except:

- (1) The Commissioner may, upon request of an insurer party to a merger authorized under this subsection, waive such applicable requirements.
- (2) The Commissioner may waive or modify the requirements for public notice and hearing.
- (3) An alien insurer may be a party to a merger authorized under this subsection, provided that the requirements for a merger between a captive insurance company and a foreign insurer under this Chapter shall apply to a merger between a captive insurance company and an alien insurer under this subsection. For the purposes of this subdivision, an alien insurer shall be treated as a foreign insurer under this Chapter, and the domicile of the alien shall be the equivalent to that of another state.

(h) Captive insurance companies formed as reciprocal insurers under this Part shall have the privileges provided in and be subject to Article 15 of this Chapter in addition to this Part, provided that this Part shall control in the event of a conflict. To the extent a reciprocal insurer is made subject to other provisions of this Chapter pursuant to Article 15 of this Chapter, such provisions shall not be applicable to a reciprocal insurer formed under this Part unless such provisions are expressly made applicable to captive insurance companies under this Part.

(i) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(j) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one-third of the number of its members.

(k) With the Commissioner's approval, a captive insurance company organized as a stock insurer may convert to a nonprofit corporation with one or more members by filing with the Secretary of State an election for such conversion, provided that:

- (1) The election shall certify that, at the time of the company's original organization and at all times thereafter, the company has conducted its business in a manner not inconsistent with a nonprofit purpose.
- (2) At the time of the filing of its election, the company shall file with both the Commissioner and the Secretary of State articles of conversion, including articles of incorporation consistent with this Part and with all other applicable State statutes and laws.

(l) In the case of a captive insurance company formed as a limited liability company, a reciprocal insurance company, or mutual insurance company, any proxy executed by the members, subscribers, and policyholders of each shall be valid if executed and transmitted in compliance with all applicable State statutes and laws.

(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 of risks of certain of its parents, affiliates, 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.
- (2) Amounts allocated to a separate account in the exercise of the power granted by this subsection are owned by the captive insurance company, and the

captive insurance company may not be nor hold itself out to be a trustee with respect to such amounts.

- (3) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued in accordance with the laws or rules otherwise applicable to the captive insurance company's assets.
- (4) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the captive insurance company may conduct.
- (5) No sale, exchange, or other transfer of assets may be made by such captive insurance company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in the case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made and unless such transfer, whether into or from a separate account is made by a transfer of cash or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the Commissioner. The Commissioner may approve other transfers among such accounts, if, in his opinion, such transfers would be equitable.
- (6) To the extent deemed necessary by a captive insurance company in to comply with any applicable federal or State laws, the captive insurance company, with respect to any separate account, including any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

**§ 58-10-385. Directors.**

(a) Every captive insurance company shall report to the Commissioner within 30 days after any change in its executive officers or directors, including in its report a biographical affidavit for each new officer or director. The change shall be deemed approved unless it is disapproved within 30 days from the completion of the Commissioner's review of the biographical affidavit.

(b) No director, officer, or employee of a captive insurance company shall, except on behalf of the captive insurance company, accept or be the beneficiary of, any fee, brokerage, gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the captive insurance company unless otherwise approved in advance by the Commissioner, but such person may receive reasonable compensation for necessary services rendered to the captive insurance company in his or her usual private, professional, or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the captive insurance company.

**§ 58-10-390. Conflict of interest.**

(a) Each captive insurance company 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.

(b) Each officer, director, and key employee shall file such disclosure with the board of directors or other governing body of the captive insurance company annually.

**§ 58-10-395. Plan of operation change.**

(a) Any material change in a captive insurance company's 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.

(b) Any change in any other information filed with the application must be filed with the Commissioner within 60 days but does not require prior approval.

**§ 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.

**§ 58-10-405. Annual reports.**

(a) No captive insurance 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 other comprehensive basis of accounting. The Commissioner may require, approve, or accept any appropriate or necessary modifications of the 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.

(c) A pure captive insurance company, a special purpose captive insurance company, or an industrial insured captive insurance company may make written application to the Commissioner for filing the required report on an alternative reporting date based on the company's fiscal year-end. If an alternative reporting date is granted by the Commissioner, then, the annual report is due 75 days after the fiscal year-end.

(d) The Commissioner may require any captive insurance company to file a report on its financial condition semiannually, quarterly, monthly, or any other frequency determined by the Commissioner.

(e) The Commissioner may waive the filing of the annual report required by this section subject to the filing of the annual audit required by G.S. 58-10-415. A captive insurance company must make a written request for exemption from the annual report at least 30 days prior to the annual report due date. The Commissioner may not simultaneously exempt a captive insurance company from both the annual report and the annual audit requirements.

(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.

§ 58-10-410: Reserved for future codification purposes.

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

(a) All captive insurance companies with the exception of risk retention groups shall have an annual audit by an independent certified public accountant and shall file such audited financial report with the Commissioner on or before June 30 for the prior calendar year. Risk retention groups shall comply with Parts 6 and 7 of Article 10 of this Chapter instead of this section.

(b) Captive insurance companies that have received approval to report on other than a calendar year basis pursuant to G.S. 58-10-405 shall file such statements within 180 days after the end of their fiscal year.

(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 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 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 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).
- (3) Repealed by Session Laws 2014-65, s. 9, effective July 1, 2014.
- (4) Repealed by Session Laws 2014-65, s. 9, effective July 1, 2014.
- (5) Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.
- (e) Every captive insurance company, unless otherwise exempted by the Commissioner, shall annually submit with the annual audited financial report the opinion of an appointed actuary entitled, "Statement of Actuarial Opinion," evaluating the captive insurance company's loss reserves and loss expense reserves. The individual who prepares the Statement of Actuarial Opinion shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated to the Commissioner competence in loss reserve evaluation.

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

(a) A captive insurance company, after becoming subject to this Part, shall within 60 days, if not already disclosed at the time of application, report to the Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in G.S. 58-10-415.

(b) A captive insurance company shall require its independent certified public accountant to immediately notify in writing an officer and all members of the board of directors or other governing body of the captive insurance company of any determination by the independent certified public accountant that the captive insurance company has materially misstated its financial condition in its report to the Commissioner as required in G.S. 58-10-405. A captive insurance company receiving a notification pursuant to this subsection shall forward a copy of the notification to the Commissioner within five business days after receipt of the notification and shall provide the independent certified public accountant with proof that the notification was forwarded to the Commissioner. If the independent certified public accountant fails to receive the proof within the five-day period required by this subsection, the independent certified public accountant shall within the next five business days submit a copy of the notification to the Commissioner.

(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 audit, and all working papers obtained during the course of such 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.
- (3) Repealed by Session Laws 2016-78, s. 4.1.(m), effective June 30, 2016.

(e) Risk retention groups shall comply with Part 7 of Article 10 of this Chapter instead of this section.

#### **§ 58-10-425. Deposit requirement.**

(a) The Commissioner may require a captive insurance company to maintain a deposit with the Commissioner in a form and amount as the Commissioner may specify.

(b) A captive insurance company may receive interest or dividends from deposits held by the Commissioner or exchange the deposits for others of equal value with the approval of the Commissioner.

(c) If a captive insurance company discontinues business, the Commissioner shall return deposits held by the Commissioner only after being satisfied that all obligations of the captive insurance company have been discharged.

#### **§ 58-10-430. Audits.**

(a) Whenever the Commissioner determines it to be prudent, the Commissioner shall 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 audit shall be paid by the captive insurance company.

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

(c) All audit reports, preliminary 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 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 audited in accordance with the Examination Law, G.S. 58-2-131 through G.S. 58-2-134.

#### **§ 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 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 audit or any legal obligation relative to an 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.

(b) Before the Commissioner suspends or revokes the license of a captive insurance company under subdivisions (a)(7) or (a)(8) of this section, the Commissioner shall give the captive insurance company notice in writing of the grounds on which the Commissioner proposes to suspend or revoke the license and shall afford the captive insurance company an opportunity to make objection in writing within the period of 30 days after receipt of notice. The Commissioner shall take into consideration any objection received by the Commissioner within that period and, if the Commissioner decides to suspend or revoke the license, cause the order of suspension or revocation to be served on the captive insurance company.

#### **§ 58-10-440. Investment requirements.**

(a) Except as may be otherwise authorized by the Commissioner, association captive insurance companies and risk retention groups shall comply with the investment requirements contained in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable. Notwithstanding any other provision of this Chapter, the Commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company, industrial insured captive insurance company, protected cell captive insurance company, special purpose captive insurance company, or special purpose financial captive insurance company shall be subject to any restrictions on allowable investments, provided that the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(c) No captive insurance company or protected cell shall make a loan to or an investment in an 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.

(d) Notwithstanding this section or G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, an association captive insurance company of an association described in G.S. 58-10-340(4)(b) may hold any interest in qualified headquarters property, and the qualified headquarters property shall be admitted assets and authorized investments of the association captive insurance company. The net book value of the qualified headquarters property



deemed admitted and authorized under this subsection may not exceed two million five hundred thousand dollars (\$2,500,000), and an association captive insurance company holding qualified headquarters property pursuant to this subsection shall at all times maintain total surplus, without regard to the qualified headquarters property, of at least the sum of (i) fifty percent (50%) of the net book value of the qualified headquarters property and (ii) the minimum capital and surplus requirements. For purposes of this subsection, "qualified headquarters property" includes the real property and the building in which the principal office of the association captive insurance company is located and also includes any improved and unimproved real property of the association captive insurance company that is located within 1,500 feet of the company's principal office.

**§ 58-10-445. Reinsurance.**

(a) Any captive insurance company may provide reinsurance as authorized by this Chapter on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with this Chapter. If the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer. The Commissioner shall have the discretion to allow a captive insurance company to take credit for the reinsurance of risks or portions of risks ceded to an unauthorized reinsurer, after review, on a case-by-case basis. The Commissioner may require any documents, financial information, or other evidence that will allow an unauthorized reinsurer to demonstrate adequate security for its financial obligations.

(c) In addition to reinsurers authorized by this Chapter, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association to the extent authorized by the Commissioner. The Commissioner may require any documents, financial information, or other evidence that such a pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that in the Commissioner's judgment are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and benefit of the public at large.

(d) Insurance by a captive insurance company of any workers' compensation or accident and health-qualified self-insured plan shall only be in the form of reinsurance.

(e) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

(f) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(g) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing such reinsurance. The Commissioner may require that complete copies of all reinsurance treaties and contracts be filed and approved by the Commissioner.

**§ 58-10-450. Membership in rating organizations; exemption from compulsory associations.**

(a) No captive insurance company shall be required to join a rating organization.

(b) No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan,

pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

**§ 58-10-455. Taxation.**

A captive insurance company is taxed in accordance with Article 8B of Chapter 105 of the General Statutes.

**§ 58-10-460. Adoption and amendment of rules by Commissioner.**

The Commissioner may adopt and, from time to time, amend such rules relating to captive insurance companies as are necessary to enable the Commissioner to carry out the provisions of this Part.

**§ 58-10-465. Applicable provisions.**

(a) No provisions of this Chapter, other than those contained in this Part or as expressly provided in this Part, shall apply to captive insurance companies. Risk retention groups shall have the privileges and be subject to Article 22 of this Chapter in addition to the applicable provisions of this Part.

(b) The Commissioner may exempt special purpose captive insurance companies, on a case-by-case basis, from provisions of this Chapter and any rules established under this Chapter that the Commissioner determines to be inappropriate given the nature of the risks to be insured.

**§ 58-10-470. Repealed by Session Laws 2016-78, s. 4.1.(p), effective June 30, 2016.**

**§ 58-10-475. Supervision; rehabilitation; liquidation.**

Except as otherwise provided in this Part, the terms and conditions set forth in Article 30 of this Chapter shall apply in full to captive insurance companies licensed under this Part.

**§ 58-10-480. Authority for expenditure of public funds.**

Any municipality, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity whether chartered or organized by local act or public act of the General Assembly, or otherwise, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity may expend public funds for the purchase of capital stock in a captive insurance company or to provide guaranty capital in a mutual captive insurance company, provided that at the time of authorization of expenditure of public funds adequate insurance markets in the United States are not available to cover the risks, hazards, and liabilities of the public body or that the needed coverage is only available at excessive rates or with unreasonable deductibles.

**§ 58-10-485. Violations and penalties.**

(a) If, after providing the opportunity for a contested case hearing held in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, the Commissioner finds that any insurer, person, or entity required to be licensed or authorized to transact the business of insurance under this Part has violated any provision of this Part or any rule or regulation authorized by this Part, the Commissioner may order:

- (1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation.
- (2) Payment of a monetary penalty pursuant to G.S. 58-2-70.
- (3) The suspension or revocation of the insurer's, person's, or entity's license.

(b) Whenever the Commissioner has evidence that any person has violated or is violating any provisions of this Part, or has violated or is violating any order or requirement of the

Commissioner issued by the Commissioner under this Part, and that the interests of policyholders, creditors, or the public may be irreparably harmed by delay, the Commissioner may issue an emergency cease and desist order that shall become effective on the date specified in the order. The emergency cease and desist order shall also include a notice of hearing, which shall be conducted as provided under Article 3A of Chapter 150B of the General Statutes. However, the person ordered to cease and desist under this subsection may request and shall be granted an expedited review of the order. The emergency order shall remain in effect prior to and during the proceedings, unless modified by the Commissioner.

**§ 58-10-490. Inactive captive insurance companies.**

(a) As used in this section, unless the context requires otherwise, “inactive captive insurance company” means a captive insurance company which meets both of the following criteria:

- (1) The company has ceased transacting the business of insurance.
- (2) There are no remaining liabilities associated with policies written or assumed by the company.

(b) The Commissioner may declare a captive insurance company, other than a risk retention group, an inactive captive insurance company, if such captive insurance company meets the criteria of subsection (a) of this section.

(c) An inactive captive insurance company shall possess and maintain unimpaired capital and surplus in an amount determined by the Commissioner.

(d) An inactive captive insurance company shall not be subject to or liable for the payment of any tax under Article 8B of Chapter 105 of the General Statutes.

(e) The Commissioner may exempt an inactive captive insurance company from any of the filing and reporting requirements of this Part.

**§ 58-10-495. Captive insurance companies reinsuring life insurance policies.**

(a) A captive insurance company that reinsures life insurance policies, including term, universal, and variable life policies, and related guarantees and riders, shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring life insurance policies.

(b) For purposes of the annual report required pursuant to G.S. 58-10-405, a captive insurance company described by subsection (a) of this section shall comply with the following requirements:

- (1) If the company uses statutory accounting principles, it shall submit the annual report in the form of the annual statement approved by the NAIC for life insurers, as modified or supplemented by the Commissioner, unless the Commissioner requires or approves a different form of annual report.
- (2) If the company uses generally accepted accounting principles, including any appropriate modifications or adaptations thereto approved by the Commissioner, it shall submit the annual report in a form approved by the Commissioner.

**§ 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.

## Subpart 2. Protected Cell Captive Insurance Companies.

### § 58-10-500. Forming a protected cell captive insurance company.

(a) One or more sponsors may form a protected cell captive insurance company under this Subpart.

(b) A protected cell captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

### § 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 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.

### § 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 by Session Laws 2015-99, s. 1, effective June 19, 2015.
- (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 unless otherwise approved by the Commissioner.

(b) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company, unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the protected cell. No protected cell captive insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, the protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and otherwise allowed under applicable law.

(c) This Part shall not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(d) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify (i) the one or more protected cells of the protected cell captive insurance company and (ii) the assets and liabilities attributable to each protected cell. The directors of a protected cell captive insurance company shall keep protected cell assets and liabilities:

- (1) Separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account.
- (2) Attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

If this subsection is violated, then the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing shall not be construed as an exclusive remedy.

(e) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

(f) Each protected cell shall be accounted for separately on the books and records of the protected cell captive insurance company to reflect (i) the financial condition and results of operations of such protected cell, (ii) net income or loss, (iii) dividends or other distributions to participants, and (iv) such other factors as may be provided in the participant contract or required by the Commissioner.

(g) No asset of a protected cell shall be chargeable with liabilities arising out of any other insurance business the protected cell captive insurance company may conduct.

(h) No sale, exchange, or other transfer of assets shall be made by such protected cell captive insurance company between or among any of its protected cells without the consent of such protected cells.

(i) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a protected cell captive insurance company or participant without the Commissioner's approval. In no event shall the Commissioner's approval be given if the sale,

exchange, transfer, dividend, or distribution would result in the insolvency or impairment of a protected cell.

(j) The protected cell captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell captive insurance company is a party, including any payments made by or due to be made to the protected cell captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell.

(k) In connection with the rehabilitation or liquidation of a protected cell or protected cell captive insurance company, the assets and liabilities of a protected cell shall, to the extent the Commissioner determines they are separable, at all times be kept separate from and shall not be commingled with those of other protected cells and the protected cell captive insurance company's general account.

(l) Each protected cell captive insurance company shall annually file with the Commissioner such financial reports as required by the Commissioner. Any such financial report shall include without limitation a consolidating schedule detailing the financial experience of each protected cell.

(ll) 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 impaired, insolvent, or otherwise unable to meet its claim or expense obligations.

(n) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new protected cell, the withdrawal of any participant, or the termination of any existing protected cell shall constitute a change in the plan of operation requiring the Commissioner's prior written approval.

(o) If required by the Commissioner, the business written by a protected cell captive insurance company, with respect to each protected cell shall be:

- (1) Fronted by an insurance company approved by the Commissioner.
- (2) Reinsured by a reinsurer approved by the Commissioner.
- (3) Secured by a trust fund in the United States for the benefit of policyholders and claimants, funded by an irrevocable letter of credit, or other arrangement that is acceptable to the Commissioner. The Commissioner may require the protected cell captive insurance company to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit shall be issued by a bank approved by the Commissioner. A trust maintained pursuant to this subdivision shall be established in a form and upon such terms approved by the Commissioner.

(p) Notwithstanding this Chapter or other laws of this State, and in addition to G.S. 58-10-525, in the event of an insolvency of a protected cell captive insurance company where the Commissioner determines that one or more protected cells remain solvent, the Commissioner

may separate such cells from the protected cell captive insurance company and may allow, on application of the protected cell captive insurance company or a protected cell's participant, for the conversion or transfer of such protected cells into one or more new or existing protected cell captive insurance companies, or one or more other captive insurance companies, pursuant to such plan or plans of operation as the Commissioner deems acceptable.

(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.

(r) A protected cell of a protected cell captive insurance company may enter into a contract with its protected cell captive insurance company or with another protected cell of the protected cell captive insurance company that shall be enforceable as if each protected cell of the protected cell captive insurance company were a separate legal entity, even if the protected cell is not organized as an incorporated protected cell.

#### **§ 58-10-512. Incorporated protected cells.**

(a) A protected cell of a protected cell captive insurance company may be formed as an incorporated protected cell.

(b) The articles of incorporation or articles of organization of an incorporated protected cell shall refer to the protected cell captive insurance company for which it is a protected cell and shall state that the protected cell is incorporated or organized for the limited purposes authorized by the protected cell captive insurance company's license.

(c) An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner. Unless otherwise permitted by the organizational documents of a protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(d) In addition to the information required to be filed pursuant to G.S. 58-10-510(a)(1), a protected cell captive insurance company shall meet the requirements of G.S. 58-10-345(c)(1) for each incorporated protected cell. Other documents related to the incorporated protected cell shall be filed with the Commissioner as required before issuing policies of insurance.

(e) It is the intent of the General Assembly under this section to provide protected cell captive insurance companies with the option to establish one or more protected cells as a separate corporation or other legal entity. This section shall not be construed to limit any rights or protections applicable to protected cells that are not incorporated protected cells.

(f) Subject to the prior written approval of the protected cell captive insurance company and of the Commissioner, an incorporated protected cell shall be entitled to enter into contracts and undertake obligations in its own name and for its own account. In the case of a contract or obligation to which the protected cell captive insurance company is not a party, either in its own name and for its own account or on behalf of a protected cell, the counterparty to the contract or obligation shall have no right or recourse against the protected cell captive insurance company and its assets other than against assets properly attributable to the incorporated protected cell that is a party to the contract or obligation.

#### **§ 58-10-513. Cell shares and cell dividends.**

(a) A protected cell captive insurance company may create and issue shares from any of its protected cells, the proceeds of which shall be included in the assets attributable to the cell from which the cell shares were issued.

(b) The proceeds of the issue of shares other than cell shares created and issued by a protected cell captive insurance company shall be included in the protected cell captive insurance company's general account.

(c) A protected cell captive insurance company may pay dividends to cell shareholders from assets attributable to such cell in accordance with the provisions of G.S. 58-10-375.

**§ 58-10-515. Participants in a protected cell captive insurance company.**

(a) Any person may be a participant in a protected cell captive insurance company formed or licensed under this Part.

(b) A sponsor may be a participant in a protected cell captive insurance company.

(c) A participant need not be a shareholder of the protected cell captive insurance company or any affiliate thereof.

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

**§ 58-10-517. Company to inform persons they are dealing with protected cell captive insurance company.**

A protected cell captive insurance company shall inform any person with whom it transacts business that it is a protected cell captive insurance company, and for the purposes of that transaction, identify or specify the protected cell with which that person is transacting, unless that transaction is not a transaction with a particular protected cell, in which case it shall specify that the transaction is with the protected cell captive insurance company's core.

**§ 58-10-520. Combining assets of protected cells.**

Notwithstanding G.S. 58-10-510, the assets of two or more protected cells may be combined for purposes of investment and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes.

**§ 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) 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.

Subpart 3. Branch Captive Insurance Companies.

**§ 58-10-530. Establishment of branch captive insurance companies.**



(a) A branch captive insurance company may be established in this State, in accordance with this Subpart, to write in this State any insurance or reinsurance of the employee benefit business of its parent and affiliated companies that is subject to the Employee Retirement Income Security Act of 1974, as amended, or any insurance or reinsurance permitted to be written by captive insurance companies pursuant to this Part.

(b) No branch captive insurance company shall do any insurance business in this State unless it maintains the principal place of business for its branch operations in this State.

**§ 58-10-535. Security for payment of branch captive insurance company liabilities.**

(a) No branch captive insurance company shall be issued a license by the Commissioner unless it possesses and maintains as security for the payment of liabilities attributable to the branch operations:

- (1) An amount equal to the amount set forth in G.S. 58-10-370 as the minimum capital requirement for a pure captive insurance company.
- (2) Reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, that the Commissioner may permit a branch captive insurance company to credit against any such reserve requirement any security for loss reserves that the branch captive insurance company may post with a ceding insurer or that may be posted by a reinsurer with the branch captive insurance company, and in either case if such security remains posted.

(b) Subject to the prior approval of the Commissioner, the amounts required in subsection (a) of this section may be held in the form of:

- (1) A trust formed under a trust agreement and funded by assets acceptable to the Commissioner.
- (2) An irrevocable letter of credit issued by a bank approved by the Commissioner.
- (3) With respect to the amounts required in subdivision (a)(1) of this section only, cash on deposit with the Commissioner.
- (4) Any combination of subdivisions (b)(1) through (3) of this section.

**§ 58-10-540. Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.**

**§ 58-10-545. Filing of reports and statements.**

Prior to March 1 of each year, or with the approval of the Commissioner within 60 days after its fiscal year-end, a branch captive insurance company shall file with the Commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two of its executive officers. If the Commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the Commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

**§ 58-10-550. Audit of a branch captive insurance company.**

(a) Any 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 audit of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

#### Subpart 4. Special Purpose Financial Captives.

##### **§ 58-10-555. Creation of special purpose financial captives.**

Special purpose financial captives (SPFCs) are provided by this Subpart exclusively to facilitate the securitization of one or more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. SPFCs are created for the limited purpose of entering into SPFC contracts and insurance securitization transactions and into related agreements to facilitate the accomplishment and execution of those transactions. The creation of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden sources of capital for insurers, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to further the economic development and expand the interest of this State through its captive insurance program.

##### **§ 58-10-560. Controlling provisions when conflict exists; exemptions.**

(a) No provisions of this Chapter, other than those expressly provided in this Part, shall apply to an SPFC. If any conflict occurs in this Part related to an SPFC, the provisions of this Subpart shall control.

(b) The Commissioner may exempt an SPFC or its protected cells, on a case-by-case basis, from this Part if the Commissioner determines regulation under this Part to be inappropriate given the nature of the risks to be insured.

##### **§ 58-10-565. Application requirements.**

(a) An SPFC, when permitted by its organizational documents, may apply to the Commissioner for a certificate of authority to transact insurance or reinsurance business as authorized by this Part. An SPFC shall only insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this Part, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the Commissioner.

(b) To transact business in this State, an SPFC shall:

- (1) Comply with the procedures established in G.S. 58-10-345(c).
- (2) Obtain from the Commissioner a certificate of authority authorizing it to conduct insurance or reinsurance business, or both, in this State.
- (3) Hold at least one management meeting each year in this State. For the purposes of this section, management is defined as the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other of those agents to act on behalf of the SPFC.
- (4) Maintain its principal place of business in this State.
- (5) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this State. If the registered agent, with reasonable diligence, is not found at the registered office of the SPFC, the Commissioner shall be an agent of the SPFC upon whom any process, notice, or demand may be served.

- (6) Provide such documentation of the insurance securitization as requested by the Commissioner immediately upon closing of the transaction, including:
    - a. An opinion of a duly licensed North Carolina legal counsel with respect to compliance with this Part and any other applicable laws as of the effective date of the transaction.
    - b. A statement under oath of its president and secretary demonstrating its financial condition.
  - (7) Provide a complete set of the documentation of the insurance securitization to the Commissioner immediately following closing of the transaction.
- (c) A complete SPFC application shall include the following:
- (1) A certified copy of the SPFC's organizational documents.
  - (2) Evidence of:
    - a. The amount and liquidity of its assets relative to the risks to be assumed.
    - b. The adequacy of the expertise, experience, and character of the person or persons who manage the SPFC.
    - c. The overall soundness of the SPFC's plan of operation.
    - d. Other factors considered relevant by the Commissioner in ascertaining whether the proposed SPFC is able to meet its policy obligations.
    - e. The applicant SPFC's financial condition, including the source and form of the minimum capital to be contributed to the SPFC.
  - (3) A plan of operation consisting of a description of or statement of intent with respect to the contemplated insurance securitization, the SPFC contract, and related transactions, which shall include:
    - a. Draft documentation or, at the discretion of the Commissioner, a written summary of all material agreements that are entered into to effectuate the SPFC contract and, before the effectuation of the SPFC contract, the insurance securitization, to include the names of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization.
    - b. The source and form of additional capital to be contributed to the SPFC.
    - c. The proposed investment strategy of the SPFC.
    - d. A description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled.
    - e. A pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract.
  - (4) Biographical affidavits in NAIC format of all of the prospective SPFC's officers and directors, providing the officers' and directors' legal names, any names under which they have or are conducting their affairs, and any other biographical information as the Commissioner may request.
  - (5) An affidavit from the applicant SPFC verifying:
    - a. The applicant SPFC complies with this Part.
    - b. The applicant SPFC operates only pursuant to this Part.
    - c. The applicant SPFC's investment strategy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and asset management of such assets relative to the

risks associated with the SPFC contract and the insurance securitization transaction.

- d. The securities proposed to be issued, if any, are valid legal obligations that are either properly registered or constitute an exempt security or form part of an exempt transaction.
- (6) Any other statements or documents required by the Commissioner to evaluate and complete the licensing of the SPFC.
- (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 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.
- (e) Information submitted pursuant to this section shall be and remain confidential, and shall not be made public by the Commissioner or the Commissioner's designee unless disclosure is ordered by a court of competent jurisdiction. In addition, the Commissioner shall have the discretion to disclose such information to a public official having jurisdiction over the regulation of insurance in another state, provided that:
  - (1) Such public official shall agree in writing to maintain the confidentiality of such information.
  - (2) The laws of the state in which such public official serves require such information to be and to remain confidential.
- (f) G.S. 58-10-430 applies to SPFCs.
- (g) SPFCs are subject to any rules or regulations promulgated pursuant to G.S. 58-10-460.
- (h) The Commissioner may retain legal, financial, and audit services from outside the Department to audit and investigate the application, the cost of which may be charged against the applicant. The Commissioner also may use internal resources to 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.
  - (i) An SPFC shall be subject to payment of premium taxes as required by G.S. 58-10-455.
  - (j) The Commissioner shall grant a certificate of authority authorizing the SPFC to transact insurance or reinsurance business as an SPFC in this State, upon a finding by the Commissioner that:
    - (1) The SPFC's proposed plan of operation provides a reasonable and expected successful operation.
    - (2) The terms of the SPFC contract and related transactions comply with this Part.
    - (3) The proposed plan of operation is not hazardous to any counterparty.
    - (4) To the extent required by law or regulation, the Commissioner or an equivalent regulatory authority of the state of domicile of each counterparty has notified the Commissioner in writing or otherwise provided assurance

satisfactory to the Commissioner that it has approved or not disapproved the transaction.

- (5) The certificate of authority authorizing the SPFC to transact business is limited only to the insurance or reinsurance activities that the SPFC is authorized to conduct pursuant to this Part.

(k) In evaluating the expectation of a successful operation, factors the Commissioner shall consider include whether the proposed SPFC and its management are of known good character and reasonably believed not to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations, with a person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(l) To minimize the likelihood that the proposed plan of operation is hazardous to any counterparty, the Commissioner may require reasonable safeguards in the SPFC's plan of operation where applicable and appropriate in the circumstance, including, without limitation, that certain assets of the SPFC be held in a trust to secure the obligations of the SPFC to a counterparty under an SPFC contract.

(m) A foreign or alien corporation or limited liability company, upon approval of the Commissioner, may become a domestic SPFC after complying with G.S. 58-10-345(c)(1). After such documents are successfully filed, the foreign or alien corporation or limited liability company is entitled to the necessary or appropriate certificates or licenses to transact business as an SPFC in this State and is subject to the authority and jurisdiction of this State. In connection with this redomestication, the Commissioner may waive any requirements for public hearings. It is not necessary for a corporation or limited liability company redomesticating into this State to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section.

#### **§ 58-10-570. Organization of an SPFC.**

(a) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the Commissioner.

(b) The SPFC's organizational documents shall limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this Part.

(c) The SPFC shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this State. Any name adopted by an SPFC shall comply with State law.

(d) An SPFC shall have at least three incorporators or organizers, of whom at least two shall be residents of this State.

(e) At least one of the members of the management of the SPFC shall be a resident of this State.

(f) An SPFC formed pursuant to this Part has the privileges of and is subject to all other requirements of this State's law applicable to its formation, as well as the applicable provisions contained in this Part, provided that this Part controls if a conflict exists in this State's law.

#### **§ 58-10-575. Minimum capital.**

(a) An SPFC shall initially possess and maintain minimum capital of not less than two hundred and fifty thousand dollars (\$250,000). All of the minimum initial capitalization shall be in cash. All other funds of the SPFC in excess of its minimum initial capitalization shall be in the form of cash, cash equivalent, or securities invested as approved by the Commissioner.

(b) Additional capitalization for the SPFC shall be determined, if so required, by the Commissioner after giving due consideration to the SPFC's plan of operation, feasibility study,

pro formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the Commissioner.

**§ 58-10-580. Authorized activities.**

(a) An SPFC shall only insure the risks of a counterparty.

(b) No SPFC shall issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third-party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the Commissioner.

(c) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this Part. Those activities may include, but are not limited to:

- (1) Entering into SPFC contracts.
- (2) Issuing SPFC securities in accordance with applicable securities law.
- (3) Complying with the terms of such contracts or securities.
- (4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions.
- (5) Complying with trust indenture, reinsurance, or retrocession, and agreements necessary or incidental to effectuate an insurance securitization in compliance with this Part or the plan of operation approved by the Commissioner.

(d) An SPFC shall do all of the following:

- (1) Discount its reserves at discount rates as approved by the Commissioner.
- (2) Maintain reserves that are actuarially sufficient to support the liabilities incurred by an SPFC in reinsuring life insurance policies.
- (3) File annually with the Commissioner an actuarial opinion on reserves provided by an approved independent actuary.

**§ 58-10-585. Establishment of protected cell accounts.**

(a) This section and G.S. 58-10-590 provide a basis for the creation and use of protected cells by an SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and generally making insurance securitizations more efficient. If a conflict exists between other provisions of this Part and either this section or G.S. 58-10-590, then this section or G.S. 58-10-515 shall control as applicable.

(b) An SPFC may establish and maintain one or more protected cells with prior written approval of the Commissioner and subject to compliance with the applicable provisions of this Part and all of the following conditions:

- (1) A protected cell shall be established only for the purpose of insuring or reinsuring risks of one or more SPFC contracts with a counterparty with the intent of facilitating an insurance securitization.
- (2) Each protected cell shall be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to the counterparty for the SPFC contract with each cell, and other factors as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the Commissioner.
- (3) Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the SPFC, and no SPFC shall be or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account.

- (4) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the Commissioner, and no other attribution of assets or liabilities by an SPFC between the SPFC's general account and its protected cell or cells is permitted. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and the related insurance securitization transaction, including any securities issued by the SPFC as part of the insurance securitization, to a particular protected cell. The insurance obligations, assets, and liabilities relating to the SPFC contract and the insurance securitization transaction that are attributed to a particular protected cell shall be consistent with:
  - a. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell.
  - b. The performance under an SPFC contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated, at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or company or group company, or any of them, in common control with them, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the agreement.
- (5) No assets of a protected cell shall be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, one or more SPFC contracts may be attributed to a protected cell only if the SPFC contracts are intended to be and ultimately are part of a single securitization transaction.
- (6) No sale, exchange, or other transfer of assets shall be made by the SPFC between or among any of the SPFC's protected cells without the consent of the Commissioner, counterparty, and each protected cell.
- (7) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, no sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a counterparty or parent without the Commissioner's approval and the sale, exchange, transfer, dividend, or distribution shall not be approved if the sale, exchange, transfer, dividend, or distribution would result in a protected cell's insolvency or impairment.
- (8) An SPFC may pay interest or repay principal, or both, and make distributions or repayments with respect to any securities attributed to a particular protected cell from assets or cash flows relating to or emerging from the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with this Part, or as otherwise approved by the Commissioner.

(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 audit services from outside the Department to 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 audit and investigate the application, the cost of which may be charged against the applicant, or both.

(d) An SPFC utilizing protected cells shall possess and maintain minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the Commissioner after giving due consideration of the SPFC's business plan, feasibility

study, and pro formas, including the nature of the risks to be insured or reinsured. For purposes of determining the capitalization of each protected cell, an SPFC shall initially capitalize and maintain capitalization in each protected cell in the amount and manner required for an SPFC in G.S. 58-10-575.

(e) The establishment of one or more protected cells alone shall not constitute and shall not be deemed to be a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the carrying out of business by the SPFC for any other fraudulent purpose.

**§ 58-10-590. Protected cell accounts.**

(a) All of the following shall apply to a protected cell:

- (1) The creation of a protected cell shall not create, with respect to that protected cell, a legal person separate from the SPFC.
- (2) Notwithstanding subdivision (a)(1) of this subsection, a protected cell shall have its own distinct name or designation that includes the words "protected cell." The SPFC shall transfer all assets attributable to the protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.
- (3) Although a protected cell is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of the court by name as the property would have been if the protected cell were a separate legal person.
- (4) The property of an SPFC in a protected cell shall be served with process in its own name in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC.
- (5) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan approved by the Commissioner, the SPFC shall close out the protected cell account.

(b) Nothing in this section shall be construed to prohibit an SPFC from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the assets of that protected cell and not from the assets of other protected cells or the assets of the SPFC's general account, unless approved by the Commissioner.

(c) Creditors with respect to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends only to that creditor with respect to that obligation, and the creditor is entitled to have recourse only to the assets of the SPFC's general account.

(d) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC contract counterparty and other creditors of the SPFC that are creditors only with respect to that protected cell and, accordingly, are entitled in conformity with this Part, to have recourse to the protected cell assets attributable to that protected cell. The assets of the protected cell are protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an SPFC contract or related insurance securitization transaction, or is otherwise incurred with respect to a protected cell, then the obligation shall:



- (1) Extend only to the protected cell assets attributable to that protected cell, and the person or counterparty, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell.
- (2) Not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and the person or counterparty, with respect to that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization held separate and apart from the capitalization of its protected cell or cells must be available at all times to pay expenses of or claims against the SPFC and may not be used to pay expenses or claims attributable to any protected cell.

(e) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate an insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the Commissioner.

(f) An SPFC shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the SPFC and the protected cell assets and protected cell liabilities to each protected cell. An SPFC shall keep protected cell assets and protected cell liabilities:

- (1) Separate and separately identifiable from the assets and liabilities of the SPFC's general account.
- (2) Attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(g) All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection, and subject to this Part and other applicable laws or regulations, the failure to include this language in the contracts or other documentation shall not be used as the sole basis by creditors, insureds or reinsureds, insurers or reinsurers, or other claimants to circumvent the provisions of this section.

(h) An SPFC with protected cells shall annually file with the Department accounting statements and financial reports required by this Part, which shall:

- (1) Detail the financial experience of each protected cell and the SPFC separately.
- (2) Provide the combined financial experience of the SPFC and all protected cells.

(i) An SPFC with protected cells shall notify the Commissioner in writing within 10 business days of a protected cell becoming insolvent.

#### **§ 58-10-595. Issuing securities.**

(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved plan of operation, and its organizational documents.

(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) Subject to the approval of the Commissioner, an SPFC may lawfully:

- (1) Account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting.
- (2) Submit for prior approval of the Commissioner periodic written requests for payments of interest on and repayments of principal of surplus notes. In lieu of approval of periodic written requests for authorization to make payments of interest on and repayments of principal of surplus notes and other debt obligations issued by the SPFC, the Commissioner may approve a formula or plan, which shall be included in the SPFC's plan of operation as amended from time to time, for payment of interest, principal, or both, with respect to such surplus notes and debt obligations.

(d) The Commissioner, without otherwise prejudicing the Commissioner's authority, may approve formulas for an ongoing plan of interest payments or principal repayments, or both, to provide guidance in connection with the Commissioner's ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(e) The obligation to repay principal or interest, or both, on the securities issued by the SPFC must reflect the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract.

#### **§ 58-10-600. Asset management agreements.**

An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses, or managing asset, credit, or interest rate risk of the investments to minimize the likelihood that the investments are not sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction, or the obligations of the SPFC under the SPFC contract.

#### **§ 58-10-605. Reinsurance.**

(a) An SPFC may reinsure only the risks of a ceding insurer pursuant to a reinsurance contract. No SPFC shall issue a contract of insurance or a contract for assumption of risk or indemnification of loss other than such reinsurance contract.

(b) Unless otherwise approved in advance by the Commissioner, no SPFC shall assume or retain exposure to insurance or reinsurance losses for its own account that are not funded by:

- (1) Proceeds from an insurance securitization, letters of credit, or other assets described in G.S. 58-10-340(22).
- (2) Premium and other amounts payable by the ceding insurer to the SPFC pursuant to the reinsurance contract.
- (3) Any return on investment of the items described in subdivisions (1) and (2) of this subsection.

(c) The reinsurance contract shall contain all provisions required or approved by the Commissioner, which requirements shall take into account the laws applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance provided under such reinsurance contract.

(d) An SPFC may cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance, subject to the prior approval of the Commissioner.

(e) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance securitization, and this Part, provided such contracts and activities are included in the SPFC's plan of operation or are otherwise approved in advance by the Commissioner. Such contracts and activities may include the following:

- (1) Entering into SPFC contracts.

- (2) Issuing SPFC securities in accordance with applicable securities law.
- (3) Complying with the terms of such contracts or securities.
- (4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions.
- (5) Complying with trust indenture, reinsurance, or retrocession and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this Part or the plan of operation approved by the Commissioner.

(f) Unless otherwise approved in advance by the Commissioner, a reinsurance contract shall not contain any provision for payment by the SPFC in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer.

(g) An SPFC shall notify the Commissioner immediately of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the SPFC to secure any obligation of the SPFC.

(h) In the SPFC insurance securitization, the contracts or other relating documentation shall contain provisions identifying the SPFC.

(i) Unless otherwise approved by the Commissioner, no SPFC shall enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile.

(j) No SPFC shall:

- (1) Have any direct obligation to the policyholders or reinsureds of the counterparty.
- (2) Perform any of the following activities with anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption:
  - a. Lend or otherwise invest assets.
  - b. Place any assets in custody, trust, or under management.
  - c. Borrow money or receive a loan or advance, other than by issuance of the securities pursuant to an insurance securitization.

**§ 58-10-610. No securities considered to be insurance or reinsurance contracts.**

No securities issued by an SPFC pursuant to an insurance securitization shall be considered to be insurance or reinsurance contracts. No investor in these securities or a holder of these securities, by sole means of this investment or holding, shall be considered to be transacting the business of insurance in this State. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this Part shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with an insurance securitization.

**§ 58-10-615. Disposition of assets; investment limitations.**

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the reinsurance contract, the insurance securitization, and other related agreements.

(b) In the insurance securitization, the security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security

shall include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the SPFC's obligations to the ceding insurer.

- (c) No SPFC shall be subject to any restriction on investments other than the following:
  - (1) The Commissioner may limit investments by an SPFC to those categories and amounts of authorized investments delineated in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable and as amended from time to time.
  - (2) No SPFC shall make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the Commissioner.
  - (3) The Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the SPFC unless the investment is otherwise approved by the Commissioner in writing.

**§ 58-10-620. Dividends.**

(a) No SPFC shall declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no extent shall the dividends decrease the capital of the SPFC below two hundred fifty thousand dollars (\$250,000). After giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the Commissioner that the SPFC can meet its obligations. Approval by the Commissioner of an ongoing plan for the payment of dividends or other distribution by an SPFC must be conditioned upon the retention at the time of each payment of capital or surplus equal to or in excess of amounts specified by or determined in accordance with formulas approved for the SPFC by the Commissioner.

(b) The dividends may be declared by the management of the SPFC if the dividends do not violate this Part or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this Part.

**§ 58-10-625. Changes in plan of operation; filing of audit and statement of operation; audits.**

(a) Any material change of the SPFC's plan of operation, whether or not through an SPFC protected cell, shall require prior approval of the Commissioner. The following transactions do not constitute material change for purposes of this section:

- (1) If initially approved in the plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction of all of these, of part or all of the securities issued pursuant to initial insurance securitization transactions.
- (2) A change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to this Part if the replacement swap counterparty carries a similar or higher rating to its predecessor with two or more nationally recognized rating agencies.

(b) No later than six months after the fiscal year-end of the SPFC, the SPFC shall file with the Commissioner an audit by a certified public accounting firm of the financial statements of the SPFC and the trust accounts.

(c) Repealed by Session Laws 2014-65, s. 19, effective July 1, 2014.

(d) Each SPFC shall file by March 1 a report of its financial condition, using either generally accepted accounting principles or, if approved, accepted, or required by the Commissioner, statutory accounting principles with useful or necessary modifications or adaptations for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Commissioner. The report shall include

a statement of income, a balance sheet, and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract. The SPFC also may include with the filing risk-based capital calculations and other adjusted capital calculations to assist the Commissioner with evaluating the levels of the surplus of the SPFC for the year ending on December 31 of the previous year. The report shall be prepared on forms required by the Commissioner. In addition, the Commissioner may require the filing of performance assessments of the SPFC contract.

(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 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 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.

#### **§ 58-10-630. Cessation of business.**

At the cessation of business of an SPFC following termination or cancellation of an SPFC contract and the redemption of any related securities issued in connection with the SPFC contract, the authority granted by the Commissioner expires or, in the case of retiring and surviving protected cells, is modified, the SPFC is no longer authorized to conduct activities unless and until a new or modified certificate of authority is issued pursuant to a new filing under this Part or as agreed by the Commissioner.

#### **§ 58-10-635. Supervision, rehabilitation, or liquidation of SPFC.**

(a) Except as otherwise provided in this section, the terms and conditions set forth in Article 30 of this Chapter pertaining to supervision, rehabilitation, and liquidation of insurers apply in full to SPFCs or each of the SPFC's protected cells, independently, or both, without causing or otherwise effecting a supervision, rehabilitation, or liquidation of the SPFC or another protected cell.

(b) Notwithstanding the provisions of Article 30 of this Chapter, and without causing or otherwise effecting a rehabilitation or liquidation of an otherwise solvent protected cell of an SPFC and subject to the provisions of subdivision (g)(5) of this section, the Commissioner may apply by petition to the court for an order authorizing the Commissioner to rehabilitate or liquidate an SPFC domiciled in this State on one or more of the following grounds:

- (1) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities.
- (2) The SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to rehabilitation or liquidation pursuant to the provisions of this Part.

(c) Notwithstanding the provisions of Article 30 of this Chapter, the Commissioner may apply by petition to the Court for an order authorizing the Commissioner to rehabilitate or liquidate one or more of an SPFC's protected cells independently, without causing or otherwise effecting a rehabilitation or liquidation of the SPFC generally or another of its protected cells on one or more of the following grounds:

- (1) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC attributable to the affected protected cell or cells intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities of the affected protected cell or cells.
- (2) The affected protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities attributable to that particular protected cell request or consent to rehabilitation or liquidation pursuant to the provisions of this Part.

(d) The Court may not grant relief provided by subdivision (b)(1) or (c)(1) of this section, unless after notice and a hearing, the Commissioner, who shall have the burden of proof, establishes by preponderance of the evidence that relief must be granted. The court's order may be made with respect to one or more protected cells by name, rather than the SPFC generally.

(e) Notwithstanding another provision in this Chapter, rules adopted under this Chapter, or another applicable law or regulation, upon any order of rehabilitation or liquidation of a SPFC, or one or more of the SPFC's protected cells, the receiver shall manage the assets and liabilities of the SPFC pursuant to the provisions of this Part. The receiver shall ascertain that the assets linked to one protected cell are not applied to the liabilities linked to another protected cell or to the SPFC generally, unless an asset or liability is linked to more than one protected cell, in which case the receiver shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract.

(f) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of rehabilitation or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the SPFC insurance securitization.

(g) Notwithstanding the provisions of Article 30 of this Chapter or other laws of this State:

- (1) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of Article 30 of this Chapter, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.
- (2) The commencement of a summary proceeding or other interim proceeding commenced before a delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security, SPFC contract, or the SPFC from taking any action required to make the payment.
- (3) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.
- (4) A receiver of an SPFC may not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.
- (5) The Commissioner may not seek to have an SPFC with protected cells declared insolvent as long as at least one of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle the SPFC's assets in compliance with subsection (e) of this section and other laws of this State.

(h) Subsection (g) of this section does not prohibit the Commissioner from taking any action permitted under Article 30 of this Chapter with respect only to the rehabilitation of an SPFC with protected cell or cells, provided the Commissioner would have had sufficient grounds

to seek to declare the SPFC insolvent, subject to and without otherwise affecting the provisions of subdivision (5) of subsection (g) of this section. In this case, with respect to the solvent protected cell or cells, the Commissioner may not prohibit payments made by the SPFC pursuant to the SPFC security, SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(i) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding another provision of this Part or other laws of this State, the assets of an SPFC, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty, pursuant to the provisions of this Part for any purpose including, without limitation, distribution to creditors of the counterparty.

#### Subpart 5. Other Provisions.

#### **§ 58-10-650. Other laws applicable to captive insurance companies.**

In addition to the statutes and laws previously referred to in this Part, the following provisions of this Chapter are applicable to all captive insurance companies subject to this Part:

- (1) G.S. 58-2-45. - Orders of Commissioner; when writing required.
- (2) G.S. 58-2-160. - Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
- (3) G.S. 58-2-162. - Embezzlement by insurance agents, brokers, or administrators.
- (4) G.S. 58-2-185. - Record of business kept by companies and agents; Commissioner may inspect.
- (5) G.S. 58-2-190. - Commissioner may require special reports.
- (6) G.S. 58-2-195. - Commissioner may require records, reports, etc., for agencies, agents, and others.
- (7) G.S. 58-2-200. - Books and papers required to be exhibited.
- (8) G.S. 58-5-1. - Deposits; use of master trust.
- (9) G.S. 58-7-50. - Maintenance and removal of records and assets.
- (10) G.S. 58-7-55. - Exceptions to requirements of G.S. 58-7-50.

#### **§ 58-10-655. Commissioner to share information with Department of Revenue.**

Notwithstanding any other provisions of Chapter 58 of the General Statutes, the Commissioner may share confidential and privileged documents, materials, or information with the Department of Revenue. The documents, materials, or information shared shall be considered tax information and subject to the provisions of G.S. 105-259.