

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 323
Insurance Committee Substitute Adopted 3/24/11

Short Title: Insurance Amendments.-AB

(Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

1 AN ACT TO MAKE CHANGES IN THE INSURANCE LAWS TO PRIVATIZE ONLINE
2 AND ADMINISTRATIVE PROCESSES FOR LICENSE APPLICANTS, CODIFY THE
3 EXISTING SENIORS' HEALTH INSURANCE INFORMATION PROGRAM, ENSURE
4 ACCURACY IN CERTIFICATES OF INSURANCE, REQUIRE PRIOR APPROVAL OF
5 SMALL GROUP HEALTH INSURANCE RATES AND ENCOURAGE THE SALE OF
6 CHILD-ONLY HEALTH INSURANCE POLICIES, AMEND THE RISK-BASED
7 CAPITAL LAW TO MAINTAIN NAIC ACCREDITATION, PROVIDE AN
8 EXEMPTION FOR LICENSING OF CLAIMS INPUT EMPLOYEES FOR PORTABLE
9 ELECTRONIC DEVICES, PROHIBIT FEDERAL PREEMPTION OF CROP
10 ADJUSTERS' REGULATION, AND EASE THE REGULATORY BURDEN ON THE
11 NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION AND THE
12 ASSOCIATION AGGREGATE SECURITY SYSTEM.

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** G.S. 58-2-69(g) reads as rewritten:

15 "(g) The Commissioner may contract with the NAIC or other persons for the provision
16 of online services to applicants and licensees, for the provision of administrative ~~services to~~
17 ~~licensees, or services, for the provision of license processing and support services, and~~ for the
18 provision of regulatory data systems to the Commissioner. The NAIC or other person with
19 whom the Commissioner contracts may charge applicants and licensees a reasonable fee for ~~the~~
20 ~~costs associated with the licensees' use the provision of online services and services, the~~
21 provision of administrative services, services, the provision of license processing and support
22 services, and the provision of regulatory data systems to the Commissioner. The fee shall be
23 agreed to by the Commissioner and the other contracting party and shall be stated in the
24 contract. The fee is in addition to any applicable license application and renewal fees. Contracts
25 for the provision of online services, contracts for the provision of administrative services, and
26 contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8
27 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes.
28 However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts
29 for supplies, materials, printing, equipment, and contractual services that exceed one million
30 dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney
31 General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be
32 awarded by the Commissioner under this subsection a standard clause which provides that the
33 State Auditor and internal auditors of the Commissioner may audit the records of the contractor
34 during the term of the agreement or contract to verify accounts and data affecting fees and
35 performance. The Commissioner shall not award a cost plus percentage of cost agreement or
36 contract for any purpose."
37



1 **SECTION 2.** Article 2 of Chapter 58 of the General Statutes is amended by adding
2 the following new section to read:

3 **"§ 58-2-31. Seniors' Health Insurance Information Program.**

4 The Seniors' Health Insurance Information Program is established within the Department as
5 a statewide health benefits counseling program to provide the State's Medicare beneficiaries
6 with counseling in Medicare, Medicare supplement insurance, long-term care insurance, and
7 related health care coverage plans."

8 **SECTION 3.** G.S. 58-3-150 reads as rewritten:

9 **"§ 58-3-150. Forms to be approved by Commissioner.**

10 (a) It is unlawful for any insurance company licensed and admitted to do business in
11 this State to issue, sell, or dispose of any policy, contract, ~~or~~ certificate, or certificate of
12 insurance, or use applications in connection therewith, until the forms of the same have been
13 submitted to and approved by the Commissioner, and copies filed in the Department. If a policy
14 form filing is disapproved by the Commissioner, the Commissioner may return the filing to the
15 filer. As used in this section, "policy form" includes endorsements, riders, or amendments to
16 policies that have already been approved by the Commissioner.

17 (b) With respect to group and blanket accident and health insurance, group life
18 insurance, and group annuity policies issued and delivered to a trust or to an association outside
19 of this State and covering persons resident in this State, the group certificates to be delivered or
20 issued for delivery in this State shall be filed with and approved by the Commissioner pursuant
21 to subsection (a) of this section.

22 (c) If not submitted electronically, all contracts, literature, advertising materials, letters,
23 and other documents submitted to the Department to comply with the filing requirements of
24 this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on
25 paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled
26 or bound.

27 (d) As used in this section, "certificate of insurance" means a document prepared or
28 issued by an insurance company or producer that is used to verify or evidence the existence of
29 property or casualty insurance coverage. "Certificate of insurance" shall not include a policy of
30 insurance or insurance binder.

31 (e) A certificate of insurance is not a policy of insurance and does not amend, extend,
32 or alter the coverage afforded by the policy to which the certificate of insurance makes
33 reference. A certificate of insurance shall not confer to a certificate of insurance holder new or
34 additional rights beyond what the referenced policy of insurance expressly provides.

35 (f) It is unlawful for any person to knowingly prepare, issue, request, or require a
36 certificate of insurance that meets any of the following criteria:

37 (1) Has not been filed with and approved by the Commissioner.

38 (2) Contains any false or misleading information concerning the policy of
39 insurance to which the certificate of insurance makes reference.

40 (3) Purports to alter, amend, or extend the coverage provided by the policy of
41 insurance to which the certificate of insurance makes reference.

42 (g) A holder of a certificate of insurance shall only have a legal right to notice of
43 cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of
44 insurance if the holder is named within the policy or any endorsement and the policy or
45 endorsement requires notice to be provided to the holder. The terms and conditions of the
46 notice, including the required timing of the notice, are governed by the policy of insurance and
47 cannot be altered by a certificate of insurance."

48 **SECTION 4.** Article 50 of Chapter 58 of the General Statutes is amended by
49 adding the following new section to read:

50 **"§ 58-50-131. Premium rates for health benefit plans; approval authority; hearing.**

1 (a) No schedule of premium rates for coverage for a health benefit plan subject to this
2 act, or any amendment to the schedule, shall be used in conjunction with any such health
3 benefit plan until a copy of the schedule of premium rates or premium rate amendment has
4 been filed with and approved by the Commissioner. Any schedule of premium rates or
5 premium rate amendment filed under this section shall be established in accordance with
6 G.S. 58-50-130(b). The schedule of premium rates shall not be excessive, inadequate, or
7 unfairly discriminatory and shall exhibit a reasonable relationship to the benefits provided by
8 the contract of insurance. Each filing shall include a certification by an individual who is a
9 member in good standing with the Society of Actuaries.

10 (b) The Commissioner shall approve or disapprove a schedule of premium rates within
11 60 days of receipt of a complete filing. It shall be unlawful to use a schedule of premium rates
12 until approved. If the Commissioner disapproves the filing, the Commissioner shall notify the
13 filer, shall specify the reasons for disapproval, and shall provide an opportunity for refiling.

14 (c) The Commissioner shall adopt rules as necessary or proper (i) to prevent the federal
15 preemption of health insurance regulation in the State, (ii) to implement the provisions of this
16 section, and (iii) to establish minimum standards for loss ratios of policies subject to this
17 section on the basis of incurred claims experience and earned premium in accordance with
18 accepted actuarial principles and practices to assure that the benefits are reasonable in relation
19 to the premium charged. The Commissioner shall adopt rules to require the submission of
20 supporting data and any information that the Commissioner considers necessary or proper to
21 determine whether the filed schedule of premium rates meets the standards set forth in this
22 section."

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

25 **"§ 58-3-285. Nondependent child coverage defined; open enrollment.**

26 (a) As used in this section, the following definitions apply:

27 (1) "Nondependent child coverage" or "nondependent child policy" means an
28 individual health benefit plan which provides coverage to an individual
29 under age 19. This shall not include health benefit plans that cover children
30 under age 19 as a dependent.

31 (2) "Health benefit plan" has the same meaning as G.S. 58-3-167(a)(1).

32 (3) "Individual market" has the same meaning as G.S. 58-68-25(a)(9).

33 (4) "Insurer" has the same meaning as G.S. 58-3-167(a)(2).

34 (5) "Open enrollment" means, with respect to "nondependent child coverage,"
35 the period of time during which any individual under age 19 has the
36 opportunity to apply for coverage under a health benefit plan offered by an
37 insurer and shall not be denied eligibility for coverage under the plan due to
38 factors relating to the individual's health status.

39 (b) An insurer who offers nondependent child coverage shall offer open enrollment
40 either continuously throughout the year or for the months of January and July of each year.
41 Coverage issued under this section shall be issued without any riders based on the health status
42 of the child. Nothing in this section shall require an insurer to offer nondependent child
43 coverage.

44 (c) The Commissioner shall adopt rules as necessary or proper to implement the
45 provisions of this section.

46 (d) Nothing in this section shall prohibit an insurer from adjusting the initial premium
47 charged an individual afforded coverage under this section based upon medical underwriting to
48 the extent that such an adjustment is in compliance with the applicable product's current rate
49 filing approved by the Commissioner."

50 **SECTION 6.** G.S. 58-12-2 reads as rewritten:

51 **"§ 58-12-2. Definitions.**

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

- 2 (1) Adjusted risk-based capital report. – A risk-based capital report that has been
3 adjusted by the Commissioner under G.S. 58-12-6.
- 4 (2) Corrective order. – An order issued by the Commissioner specifying
5 corrective actions that the Commissioner has determined are required.
- 6 (3) Domestic insurer. – Any insurance company or health organization
7 organized in this State under ~~Article 7~~, Article 7 of this Chapter as specified
8 in subdivisions (4b) and (5a) of this section, or under Article 15, 65, or 67
9 of this Chapter.
- 10 (4) Foreign insurer. – Any insurance company or health organization that is
11 admitted to do business in this State under Article 16 or 67 of this Chapter
12 but is not domiciled in this State.
- 13 (4a) Health organization. – Any insurer which is required by the Commissioner
14 to use the NAIC Health Annual Statement Blank when filing the annual
15 statement prescribed by G.S. 58-2-165 or any health maintenance
16 organization, limited health service organization, dental or vision plan,
17 hospital, medical, or dental indemnity or service corporation, or other
18 organization licensed under Article 65 or 67 of this Chapter. "Health
19 organization" does not include an insurer that is licensed as either a life or
20 health insurer or a property or casualty insurer under this Chapter and that is
21 otherwise subject to either the life or property and casualty risk-based capital
22 requirements.
- 23 (4b) Life or health insurer. – Any insurance company licensed to write the kinds
24 of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property
25 and casualty insurer writing only the kinds of insurance specified in
26 G.S. 58-7-15(3). "Life or health insurer" does not mean any insurer that is
27 required by the Commissioner to use the NAIC Health Annual Statement
28 Blank when it files the annual statement prescribed by G.S. 58-2-165.
- 29 (5) Negative trend. – A negative trend, with respect to a life or health insurer,
30 over a period of time, as determined in accordance with the "trend test
31 calculation" included in the risk-based capital instructions.
- 32 (5a) Property or casualty insurer. – Any insurance company licensed to write the
33 kinds of insurance specified in G.S. 58-7-15(4) through (22); but not
34 monoline mortgage guaranty insurers, financial guaranty insurers, or title
35 ~~insurers; insurers;~~ nor any insurer that is required by the Commissioner to use
36 the NAIC Health Annual Statement Blank when filing the annual statement
37 prescribed by G.S. 58-2-165.
- 38 (6) Risk-based capital instructions. – The risk-based capital report including
39 risk-based capital instructions adopted by the NAIC, as those risk-based
40 capital instructions may be amended by the NAIC from time to time in
41 accordance with the procedures adopted by the NAIC.
- 42 (7) Risk-based capital level. – An insurer's company action level risk-based
43 capital, regulatory action level risk-based capital, authorized control level
44 risk-based capital, or mandatory control level risk-based capital where:
- 45 a. "Company action level risk-based capital" means, with respect to any
46 insurer, the product of 2.0 and its authorized control level risk-based
47 capital.
- 48 b. "Regulatory action level risk-based capital" means the product of 1.5
49 and its authorized control level risk-based capital.

1 c. "Authorized control level risk-based capital" means the number
2 determined under the risk-based capital formula in accordance with
3 the risk-based capital instructions.

4 d. "Mandatory control level risk-based capital" means the product of
5 .70 and the authorized control level risk-based capital.

6 (8) Risk-based capital plan. – A comprehensive financial plan containing the
7 elements specified in G.S. 58-12-11(b). If the Commissioner rejects the
8 risk-based capital plan, and it is revised by the insurer, with or without the
9 Commissioner's recommendation, the plan shall be called the "revised
10 risk-based capital plan".

11 (9) Risk-based capital report. – The report required in G.S. 58-12-6.

12 (10) Total adjusted capital. – The sum of:

13 a. An insurer's statutory capital and surplus, as determined in
14 accordance with the statutory accounting applicable to the annual
15 financial statements required under G.S. 58-2-165; and

16 b. Such other items, if any, as the risk-based capital instructions may
17 provide."

18 **SECTION 7.** G.S. 58-12-11(a) reads as rewritten:

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

20 (1) The filing of a risk-based capital report by an insurer that indicates that:

21 a. The insurer's total adjusted capital is greater than or equal to its
22 regulatory action level risk-based capital but less than its company
23 action level risk-based capital, ~~if the insurer is a property or casualty~~
24 ~~insurer or a health organization;~~ capital; or

25 b. ~~The~~ In the case of a life or health insurer, the insurer has total
26 adjusted capital that is greater than or equal to its company action
27 level risk-based capital but less than the product of its authorized
28 control level risk-based capital and 2.5 and has a negative trend, ~~if~~
29 ~~the insurer is a life or health insurer;~~ trend; or

30 c. In the case of a property or casualty insurer or a health organization,
31 the insurer has total adjusted capital that is greater than or equal to its
32 company action level risk-based capital but less than the product of
33 its authorized control level risk-based capital and 3.0 and triggers the
34 trend test determined in accordance with the trend test calculation
35 included in the property and casualty or health organization
36 risk-based capital instructions.

37 (2) The notification by the Commissioner to the insurer of an adjusted ~~risk-based~~
38 risk-based capital report that indicates the event in sub-subdivision ~~(1)a. or~~
39 ~~b. (1)a., (1)b., or (1)c.~~ of this subsection if the insurer does not challenge the
40 adjusted risk-based capital report under G.S. 58-12-30.

41 (3) If the insurer challenges an adjusted risk-based capital report that indicates
42 the event in sub-subdivision ~~(1)a. or b. (1)a., (1)b., or (1)c.~~ of this subsection
43 under G.S. 58-12-30, the notification by the Commissioner to the insurer that
44 the Commissioner has rejected the insurer's challenge."

45 **SECTION 8.** Article 33 of Chapter 58 of the General Statutes is amended by
46 adding a new section to read:

47 **"§ 58-33-27. Claims handling for portable consumer electronic devices.**

48 (a) As used in this section, the following definitions apply:

49 (1) "Automated claims adjudication system" means a preprogrammed computer
50 system designed for the collection, data entry, calculation, and system
51 generated final resolution of claims on insurance policies that provide

1 coverage only on the repair and replacement of portable consumer electronic
2 devices, which system shall meet the following criteria:

3 a. Be utilized only by a licensed adjuster or supervised individuals
4 operating pursuant to this section.

5 b. Comply with all claims payment requirements of this Chapter.

6 c. Be certified as compliant with this section by a licensed adjuster who
7 is an officer of a licensed business entity under this Chapter.

8 (2) "Portable consumer electronic devices" include the following, which must be
9 easily carried or conveyed by hand: smartphones, navigation devices,
10 cellular phones, personal digital assistants, iPads, iPhones, Androids, video
11 games, wireless reading devices, laptops, tablets, netbooks, MP3 players,
12 digital cameras, and other electronic devices that are portable in nature, their
13 accessories, and services related to the use of the device.

14 (b) No adjuster license is required for an individual who, in connection solely with
15 coverage on the repair and replacement of portable consumer electronic devices as defined in
16 subdivision (a)(2) of this section, collects claim information from or furnishes claim
17 information to insureds, who conducts data entry, including entering data into an automated
18 claims adjudication system, and who does not exercise any discretion in the disposition of the
19 claim; provided that the individual is supervised by a licensed adjuster under this Chapter and
20 there are no more than 25 individuals who may adjust claims under the supervision of the
21 licensed adjuster.

22 (c) If other property losses occur in conjunction with the loss associated with the
23 portable consumer electronic device, the individual who performs duties as described in
24 G.S. 58-33-10(2) on the total loss, including the loss associated with the portable consumer
25 electronic device, must hold an adjuster license."

26 **SECTION 9.** G.S. 58-33-30(e) reads as rewritten:

27 "(e) Examination.

28 (1) After completion and filing of the application with the Commissioner, the
29 Commissioner shall require each applicant for license as an agent or an
30 adjuster to take an examination as to the applicant's competence to be
31 licensed. The applicant must take and pass the examination according to
32 requirements prescribed by the Commissioner. This subsection shall not
33 apply to adjusters who adjust only federal crop insurance claims and are
34 certified in accordance with subsection (2a) of this section.

35 (2) The Commissioner may require any licensed agent, adjuster, or motor
36 vehicle damage appraiser to take and successfully pass an examination in
37 writing, testing his competence and qualifications as a condition to the
38 continuance or renewal of his license, if the licensee has been found guilty of
39 any violation of any provision of this Chapter. If an individual fails to pass
40 such an examination, the Commissioner shall revoke all licenses issued in
41 his name and no license shall be issued until such individual has passed an
42 examination as provided in this Article.

43 (2a) Adjusters who adjust federal crop insurance claims shall be certified as
44 having passed a proficiency examination approved by the federal Risk
45 Management Agency (RMA) as a condition of obtaining an adjuster's license
46 under this Chapter, or another proficiency examination approved by the
47 Commissioner. An adjuster who intends to adjust crop insurance claims shall
48 furnish the Commissioner proof that the adjuster is certified as having
49 passed the required examination pursuant to this section.

50 (3) Each examination shall be as the Commissioner prescribes and shall be of
51 sufficient scope to test the applicant's knowledge of:

- 1 a. The terms and provisions of the policies or contracts of insurance the
2 applicant proposes to effect; or
 - 3 b. The types of claims or losses the applicant proposes to adjust; and
 - 4 c. The duties and responsibilities of the license; and
 - 5 d. The current laws of this State applicable to the license.
- 6 (4) The answers of the applicant to the examination shall be provided by the
7 applicant under the Commissioner's supervision. The Commissioner shall
8 give examinations at such times and places within this State as the
9 Commissioner considers necessary reasonably to serve the convenience of
10 both the Commissioner and applicants: Provided that the Commissioner may
11 contract directly with persons for the processing of examination application
12 forms and for the administration and grading of the examinations required
13 by this section; the Commissioner may charge a reasonable fee in addition to
14 the registration fee charged under G.S. 58-33-125, to offset the cost of the
15 examination contract authorized by this subsection; and such contracts shall
16 not be subject to Article 3 of Chapter 143 of the General Statutes. However,
17 the Commissioner shall: (i) submit all proposed statewide and agency term
18 agreements or contracts for supplies, materials, printing, equipment, and
19 contractual services that exceed one million dollars (\$1,000,000) authorized
20 by this subdivision to the Attorney General or the Attorney General's
21 designee for review as provided in G.S. 114-8.3; and (ii) include in all
22 contracts to be awarded by the Commissioner under this subdivision a
23 standard clause which provides that the State Auditor and internal auditors
24 of the Commissioner may audit the records of the contractor during the term
25 of the contract to verify accounts and data affecting fees and performance.
26 The Commissioner shall not award a cost plus percentage of cost contract for
27 any purpose.
- 28 (5) The Commissioner shall collect in advance the examination and registration
29 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The
30 Commissioner shall make or cause to be made available to all applicants, for
31 a reasonable fee to offset the costs of production, materials that he considers
32 necessary for the applicants' proper preparation for examinations. The
33 Commissioner may contract directly with publishers and other suppliers for
34 the production of the preparatory materials, and contracts so let by the
35 Commissioner shall not be subject to Article 3 of Chapter 143 of the General
36 Statutes. However, the Commissioner shall: (i) submit all proposed
37 statewide and agency term contracts for supplies, materials, printing,
38 equipment, and contractual services that exceed one million dollars
39 (\$1,000,000) authorized by this subdivision to the Attorney General or the
40 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)
41 include in all contracts to be awarded by the Commissioner under this
42 subdivision a standard clause which provides that the State Auditor and
43 internal auditors of the Commissioner may audit the records of the
44 contractor during the term of the contract to verify accounts and data
45 affecting fees and performance. The Commissioner shall not award a cost
46 plus percentage of cost contract for any purpose.
- 47 (6) In addition to the examinations for the kinds of insurance specified in
48 G.S. 58-33-25(c)(1) and (2), before any resident may sell Medicare
49 supplement or long-term care insurance policies defined respectively in
50 Articles 54 and 55 of this Chapter, the resident must take and pass a

1 supplemental written examination according to requirements prescribed by
2 the Commissioner.

- 3 (7) An individual who fails to appear for the examination as scheduled or fails
4 to pass the examination shall reapply for an examination and remit all
5 required fees and forms before being rescheduled for another examination."

6 **SECTION 10.** Article 4 of Chapter 97 of the General Statutes reads as rewritten:

7 "Article 4.

8 North Carolina Self-Insurance Security Association.

9 **"§ 97-130. Definitions.**

10 As used in this Article:

- 11 (1) "Association" means the North Carolina Self-Insurance Security Association
12 established by G.S. 97-131.
- 13 (1a) "Association Aggregate Security System" means the security system
14 established by the Association under G.S. 97-133 whereby individual
15 self-insurers collectively secure their aggregate self-insured workers'
16 compensation liabilities through the North Carolina Self-Insurance Security
17 Association.
- 18 (2) "Board" means the Board of Directors of the Association established by
19 G.S. 97-132.
- 20 (3) "Commissioner" means the North Carolina Commissioner of Insurance.
- 21 (4) "Covered claim" means an unpaid claim against an insolvent individual
22 self-insurer or group self-insurer that relates to an injury that occurs while
23 the individual self-insurer or group self-insurer is a member of the
24 Association and that is compensable under this Chapter.
- 25 (5) "Fund" means the North Carolina Self-Insurance Security Fund established
26 by G.S. 97-133.
- 27 (5a) "Group" or "Group self-insurer" means a group self-insurer licensed by the
28 Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.
- 29 (5b) "Individual self-insurer" means an individual employer licensed by the
30 Commissioner under Article 5 of this Chapter.
- 31 (6) "Member self-insurer" or "member" means an individual self-insurer or
32 group self-insurer that is required to be a member of the Association under
33 this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.
- 34 (7) "Plan" means the Plan of Operation authorized by G.S. 97-134.
- 35 (8) Repealed by Session Laws 2005-400, s. 1.2, effective January 1, 2006.
- 36 (9) "Servicing facility" means those persons delegated by the Board ~~and~~
37 ~~approved by the Commissioner~~ to settle or compromise claims and to
38 expend Fund assets to pay claims.

39 **"§ 97-131. Creation.**

40 ...

41 (b) All individual self-insurers and group self-insurers shall be and remain members of
42 the Association as a condition of being licensed to self-insure in this State. The Association
43 shall perform its functions under a Plan of Operation established or amended, or both, by the
44 ~~Board and approved by the Commissioner,~~ Board and shall exercise its powers through the
45 Board.

- 46 (1) An individual self-insurer or a group self-insurer shall be deemed to be a
47 member of the Association for purposes of another member's insolvency, as
48 defined in G.S. 97-135, when:
- 49 a. The individual self-insurer or group self-insurer is a member of the
50 Association when an insolvency occurs, or

1 b. The individual self-insurer or group self-insurer has been a member
2 of the Association at some point in time during the 12-month period
3 immediately preceding the insolvency in question.

4 (2) An individual self-insurer or a group self-insurer shall be deemed to be a
5 member of the Association for purposes of its own insolvency if it is a
6 member when the compensable injury occurs.

7 (3) In determining the membership of the Association for the purposes of
8 subdivisions (1) and (2) of this subsection for any date after the effective
9 date of this Article, no individual self-insurer or group self-insurer may be
10 deemed to be a member of the Association on any date after the effective
11 date of this Article, unless that employer is on that date licensed as an
12 individual self-insurer by the Commissioner under Article 5 of this Chapter
13 or a group of employers is at that time licensed as a group self-insurer by the
14 Commissioner under Article 47 of Chapter 58 of the General Statutes.

15 **"§ 97-132. Board of directors.**

16 The Board shall consist of not less than nine directors serving terms as established in the
17 Plan. The directors shall be selected by the members of the Association, ~~subject to the approval~~
18 ~~of the Commissioner, Association~~ and shall serve for three-year terms and until a successor is
19 elected and qualified. There is no limitation on the number of terms a director may serve. ~~In~~
20 ~~approving selections to the Board, the Commissioner shall consider, among other things,~~
21 ~~whether individual self-insurers and group self-insurers are fairly represented.~~ Directors may be
22 reimbursed from the assets of the Association for expenses incurred by them as directors.

23 **"§ 97-133. Powers and duties of the Association.**

24 (a) The Association shall:

25 (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.

26 (1a) Administer a fund, to be known as the North Carolina Self-Insurance
27 Security Fund, which shall receive the assets of the North Carolina
28 Self-Insurance Guaranty Fund previously established under subdivision (2)
29 of this subsection, the assessments required by subdivisions (2a) and (3a) of
30 this subsection and any other sums received by the Association. ~~In its~~
31 ~~discretion, the Board may determine that the assets of the Fund should be~~
32 ~~segregated or that a separate accounting shall be made in order to identify~~
33 ~~that portion of the Fund which represents assessments paid by individual~~
34 ~~self-insurers and that portion of the Fund which represents assessments paid~~
35 ~~by group self-insurers. If the Board segregates the Fund in this manner, the~~
36 ~~Association shall thereafter pay covered claims against individual member~~
37 ~~self-insurers from that portion of the Fund that represents assessments~~
38 ~~against individual self-insurers and shall thereafter pay covered claims~~
39 ~~against group member self-insurers from that portion of the Fund that~~
40 ~~represents assessments against group self-insurers.~~ The costs of
41 administering the Association shall be borne by the Fund. The Association is
42 authorized to secure insurance, primary excess insurance, reinsurance,
43 bonds, other insurance, financial guarantees and related financial instruments
44 to effectuate the purposes of the Association. The Board will invest the Fund
45 assets pursuant to an investment policy adopted by the Board and reviewed
46 and approved annually by the Department of the State Treasurer. The
47 earnings from investment of Fund assets shall be placed in or credited to the
48 Fund.

49 (2) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

1 (2a) ~~Establish, operate, and maintain~~ Establish and operate the Association
2 Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as
3 follows:

4 a. The Association shall ~~annually prepare and submit to the~~
5 ~~Commissioner a written plan to provide an Association Aggregate~~
6 ~~Security System through a combination of cash on deposit in the~~
7 ~~Fund, securities, surety bonds, irrevocable letters of credit, insurance~~
8 ~~insurance, reinsurance, or other financial instruments or guarantees~~
9 ~~owned or entered into by the Association and acceptable to the~~
10 ~~Commissioner.~~ Association. ~~The written plan shall include, but not be~~
11 ~~limited to, (i) a description of the institutions that will issue or~~
12 ~~guarantee the securities, surety bonds, irrevocable letters of credit,~~
13 ~~insurance or other financial instruments or guarantees, including, but~~
14 ~~not limited to, the credit rating, financial strength, and AM best~~
15 ~~rating, if applicable to the institutions (ii) applicable cash flow~~
16 ~~information and financial assumptions (iii) a description of the~~
17 ~~methodology to be used by the Association to assess and collect the~~
18 ~~Association Aggregate Security System assessments to be made~~
19 ~~pursuant to subdivision (3a) of this subsection and (iv) a proposed~~
20 ~~timetable for the release of existing individual company deposits~~
21 ~~posted pursuant to G.S. 97-185(e), provided, however, that no~~
22 ~~individual company deposits posted pursuant to G.S. 97-185(e) shall~~
23 ~~be released without the written consent of the Commissioner. The~~
24 ~~noncash elements of the composite security may be one year or~~
25 ~~multiple year instruments.~~

26 b. ~~Within 90 days following the submission of the initial plan under~~
27 ~~sub-subdivision a. of this subdivision, the Commissioner shall either~~
28 ~~approve or disapprove the initial plan and shall notify the Association~~
29 ~~in writing. If the Commissioner does not approve or disapprove the~~
30 ~~initial plan within 90 days following submission, then the initial plan~~
31 ~~shall be deemed to be approved by the Commissioner. All~~
32 ~~subsequent plans shall be either approved or disapproved within 60~~
33 ~~days following submission.~~

34 c. ~~The Commissioner shall also determine the total undiscounted claims~~
35 ~~liability of each individual self-insurer that will participate in the~~
36 ~~Association Aggregate Security System as well as the aggregate total~~
37 ~~undiscounted outstanding claims liabilities of all the individual~~
38 ~~self-insurers that are to participate in the Association Aggregate~~
39 ~~Security System and shall notify the Association of this~~
40 ~~determination.~~

41 d. ~~Upon approval by the Commissioner of the Association's plan for the~~
42 ~~Association Aggregate Security System, the~~ The ~~Association shall~~
43 ~~assess the individual self-insurers that participate in the Association~~
44 ~~Aggregate Security System pursuant to subdivision (3a) of this~~
45 ~~subsection.~~

46 e. ~~If the Commissioner disapproves the plan for any year, If the~~
47 ~~Association determines it is not feasible or practical to continue the~~
48 ~~Association Aggregate Security System, it shall notify the~~
49 ~~Commissioner at least 90 days prior to the termination of the~~
50 ~~Association Aggregate Security System. every~~ Every ~~self-insurer~~
51 ~~shall deposit with the Commissioner, or continue to deposit, the~~

- 1 amount required by G.S. 97-185(b3) in the manner prescribed by
2 G.S. 97-185(c).
- 3 f. Group self-insurers shall not participate in the Association Aggregate
4 Security System.
- 5 (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 6 (3a) Assess members of the Association as follows:
- 7 a. Association Aggregate Security System assessments. – The
8 Association shall assess each individual self-insurer participating in
9 the Association Aggregate Security System a security system
10 assessment. The amount of the security system assessment charged to
11 each individual self-insurer participating in the Association
12 Aggregate Security System shall be based on the Association's
13 reasonable consideration of all of the following factors:
- 14 1. The total amount of assessments necessary to provide
15 aggregate security for all participating individual
16 self-insurers.
- 17 2. The individual self-insurer's total workers' compensation
18 liabilities under the Act.
- 19 3. The financial strength and creditworthiness of the
20 participating individual self-insurer.
- 21 4. Any other relevant factors.
- 22 b. Special assessment. – In the event that there are covered claims
23 against an insolvent member or members and the assets of the Fund
24 are not sufficient to pay the obligations of the Association, then the
25 Association may collect a special assessment from the members in an
26 amount sufficient to pay the aggregate value of such covered claims.
27 Each member's special assessment shall be determined by the Board
28 and shall be based on the proportion of the member's total obligations
29 under the Act to the aggregate total of all members' obligations under
30 the Act.
- 31 c. Initial assessments. – An individual self-insurer that becomes a
32 member and does not initially participate in the Association
33 Aggregate Security System shall pay an initial assessment to the
34 Association in an amount determined by the Board. A group
35 self-insurer, upon receiving its initial license from the Commissioner,
36 shall pay an initial assessment to the Association in an amount
37 determined by the Board.
- 38 d. Each member shall be notified of assessments no later than 30 days
39 before the assessment is due.
- 40 e. Delinquent assessments, except as otherwise provided, shall bear
41 interest at a rate to be established by the Board.
- 42 f. Group assessments. – The Association may annually assess each
43 member group self-insurer in an amount not to exceed two percent
44 (2%) of the group self-insurer's annual gross premiums for the
45 preceding calendar year, as determined under G.S. 105-228.5(b),
46 (b1), and (c).
- 47 (4) Be obligated to pay covered claims.
- 48 (5) After paying any covered claim, be subrogated to the rights of the injured
49 employee and dependents and be entitled to enforce liability against the
50 self-insurer or any third party by any appropriate action brought in its own
51 name or in the name of the injured employee and dependents.

- 1 (6) Expend Fund assets in amounts necessary to pay all of the following:
2 a. The obligations of the Association under this Article subsequent to
3 an insolvency.
4 b. The expenses of handling covered claims subsequent to an
5 insolvency.
6 c. The cost of examinations under G.S. 97-137.
7 d. The costs of implementing and operating the Association Aggregate
8 Security System.
9 e. All other expenses authorized by this Article.
- 10 (7) Investigate claims brought against the Association and adjust, compromise,
11 settle, and pay covered claims to the extent of the Association's obligation;
12 and deny all other claims. The Association may review settlements to which
13 the insolvent member was a party to determine the extent to which such
14 settlements may be properly contested.
- 15 (8) Notify such persons as the Commissioner directs under G.S. 97-136.
- 16 (9) Handle claims through its directors, its employees, or through one or more
17 members or other persons designated as servicing facilities. Designation of a
18 ~~servicing facility is subject to the approval of the Commissioner, but~~
19 ~~designation~~ of a member as a servicing facility may be declined by such
20 member.
- 21 (10) Reimburse each servicing facility for obligations of the Association paid by
22 the facility and for expenses incurred by the facility while handling claims
23 on behalf of the Association.
- 24 (11) Pay any other expenses of the Association authorized by this section.
- 25 (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 26 (13) Require each member to determine annually its total undiscounted claims
27 liability and shall require each member to notify the Association of this
28 determination.
- 29 (b) The Association may:
- 30 (1) Employ or retain such persons, including, but not limited to, adjustors,
31 brokers, accountants, attorneys, financial advisors, investment bankers,
32 placement agents, and consultants, as the Board may determine are
33 necessary to handle claims, perform other duties of, provide services to, and
34 consult with the Association.
- 35 (2) Borrow funds necessary to effect the purposes of this Article in accord with
36 the Plan, including entering into standby lines of credit.
- 37 (3) Sue or be sued.
- 38 (4) Negotiate and become a party to such contracts as are necessary to carry out
39 the purpose of this section.
- 40 (5) Perform such other acts as are necessary or proper to effectuate the purpose
41 of this section.
- 42 ~~(6) Reimburse the Department of Insurance up to twenty thousand dollars~~
43 ~~(\$20,000) for consultants retained by the Department to review the initial~~
44 ~~plan submitted pursuant to G.S. 97-133(a)(2a).~~
- 45 (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 46 (c1) The Association shall provide in its Plan that the functions of administration and
47 adjusting claims shall not be performed by the same entity that provides legal representation to
48 the Association for claims.
- 49 (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

50 **"§ 97-134. Plan of Operation.**

51 The Plan is as follows:

- 1 (1) The Association ~~Board~~ shall submit to the ~~Commissioner~~ adopt a Plan of
2 Operation and any amendments necessary or suitable to assure the fair,
3 reasonable, and equitable administration of the Association. ~~The Plan and~~
4 ~~any amendments become effective upon approval in writing by the~~
5 ~~Commissioner. If the Association at any time fails to submit a suitable Plan~~
6 ~~or suitable amendment to the Plan the Commissioner shall, after notice and~~
7 ~~hearing, adopt such reasonable rules as are necessary or advisable to~~
8 ~~effectuate this Article. The rules shall continue in force until modified by the~~
9 ~~Commissioner or superseded by a Plan submitted by the Association and~~
10 ~~approved by the Commissioner.~~
- 11 (2) All member self-insurers shall comply with the Plan.
- 12 (3) The Plan shall:
- 13 a. Establish the procedures whereby all the powers and duties of the
14 Association under G.S. 97-133 will be performed.
- 15 b. Establish procedures for investing and managing Fund assets.
- 16 c. Adopt a reasonable mechanism and procedure to achieve equity in
17 assessing members under G.S. 97-133.
- 18 d. Establish the amount and method of reimbursing members of the
19 Board under G.S. 97-132.
- 20 e. Establish procedures by which claims may be filed with the
21 Association and establish acceptable forms of proof of covered
22 claims.
- 23 f. Establish regular places and times for meetings of the Board.
- 24 g. Establish procedures for records to be kept of all financial
25 transactions of the Association, its agents, and the Board.
- 26 h. Provide that any member self-insurer aggrieved by any final action or
27 decision of the Association may appeal to the Commissioner within
28 30 days after the action or decision.
- 29 i. ~~Establish the procedures whereby selections for the Board shall be~~
30 ~~submitted to the Commissioner.~~
- 31 j. Contain additional provisions necessary or proper for the execution
32 of the powers and duties of the Association.

33 ...

34 "**§ 97-136. Powers and duties of the Commissioner.**

35 (a) The Commissioner shall:

- 36 (1) Notify the Association of the existence of an insolvent member self-insurer
37 not later than 30 days after he receives notice of an insolvency pursuant to
38 the standards set forth in G.S. 97-135.
- 39 (2) ~~Approve or disapprove the plan for an Association Aggregate Security~~
40 ~~System as required under G.S. 97-133(a)(2a)b. and notify the Association of~~
41 ~~the information required under G.S. 97-133(a)(2a)c.~~

42 "**§ 97-137. Examination of the Association.**

43 The Association shall be subject to examination and regulation by the Commissioner. The
44 Board shall submit, not later than ~~March 30~~ June 1 of each year, a financial report for the
45 preceding calendar year in a form approved by the Commissioner.

46 "

47 **SECTION 11.** G.S. 97-185(a1) reads as rewritten:

48 "(a1) All individual self-insurers as defined in G.S. 97-130(5b) shall participate in the
49 Association Aggregate Security System established under G.S. 97-131 unless excluded by the
50 Board of Directors of the North Carolina Self-Insurance Security Association. The Board of

1 Directors of the North Carolina Self-Insurance Security Association shall exclude all of the
2 following from the Association Aggregate Security System:

- 3 (1) Individual self-insurers whose licenses have previously been revoked by the
4 Commissioner.
- 5 (2) Individual self-insurers with a debt rating as established by Standard &
6 Poor's Rating Service or by Moody's Investor Service, below the minimum
7 Standard & Poor's ~~and or~~ Moody's ratings if a minimum debt rating has been
8 established in the written plan by the Board of Directors of the North
9 Carolina Self-Insurance Security Association for the Association Aggregate
10 Security System submitted by the Association and approved by the
11 Commissioner under G.S. 97-133(a)(2a).System.
- 12 (3) Individual self-insurers that have defaulted on the payment of their
13 self-insured workers' compensation liabilities.
- 14 (4) Individual self-insurers that fail to submit sufficient financial information to
15 enable the Association to determine their total outstanding workers'
16 compensation liabilities, or their creditworthiness, or both.

17 The Board of Directors of the North Carolina Self-Insurance Security Association shall
18 notify the Commissioner of the individual self-insurers that are excluded from participating in
19 the Association Aggregate Security System."

20 **SECTION 12.** Sections 1, 4, 10, and 11 of this act become effective July 1, 2011.
21 Sections 3, 5, 6, and 7 of this act become effective October 1, 2011. Section 8 of this act
22 becomes effective July 1, 2012, and applies to licenses issued on or after that date. The
23 remainder of this act is effective when it becomes law.