

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H

1

HOUSE BILL 127

Short Title: DOI Omnibus Bill.-AB (Public)

Sponsors: Representatives Setzer and Humphrey (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Insurance, if favorable, State Government, if favorable, Rules, Calendar, and Operations of the House

February 16, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE INSURANCE LAWS OF NORTH
3 CAROLINA, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. SURPLUS LINES ACT CLARIFYING CHANGES**

7 **SECTION 1.(a)** G.S. 58-21-10 reads as rewritten:

8 **"§ 58-21-10. Definitions.**

9 As used in this Article:

- 10 (1) ~~"Admitted insurer" means an~~ Admitted insurer. – An insurer licensed to
11 engage in the business of insurance in this State.
- 12 (1a) ~~"Affiliate" means, with~~ Affiliate. – With respect to an insured, includes any
13 entity that controls, is controlled by, or is under common control with the
14 insured.
- 15 (1b) ~~"Affiliated group" means any~~ Affiliated group. – Any group of entities that
16 are all affiliated.
- 17 (2) ~~"Capital", as~~ Capital. – As used in the financial requirements of
18 G.S. 58-21-20, ~~means~~ includes funds paid in for stock or other evidence of
19 ownership.
- 20 (2a) ~~"Control" means an~~ Control. – An entity ~~that has 'control'~~ control over another
21 entity if either of the following occurs:
22 a. The entity directly or indirectly or acting through one or more other
23 persons owns, controls, or has the power to vote twenty-five percent
24 (25%) or more of any class of voting securities of the other entity.
25 b. The entity controls in any manner the election of a majority of the
26 directors or trustees of the other entity.
- 27 (3) ~~"Eligible surplus lines insurer" means an~~ Eligible surplus lines insurer. – An
28 alien insurer as defined in G.S. 58-21-17, a nonadmitted domestic surplus
29 lines insurer, or a nonadmitted insurer with which a surplus lines licensee may
30 place surplus lines insurance under G.S. 58-21-20.
- 31 (4) ~~"Export" means to~~ Export. – To place surplus lines insurance with a
32 nonadmitted domestic surplus lines insurer or a nonadmitted insurer.



* H 1 2 7 - V - 1 *

- 1 (4a) ~~"Nonadmitted domestic surplus lines insurer" means an Nonadmitted~~
 2 ~~domestic surplus lines insurer. – An insurer that is domiciled in and authorized~~
 3 ~~pursuant to G.S. 58-21-21 to transact surplus lines insurance in this State.~~
- 4 (5) ~~"Nonadmitted insurer" means an Nonadmitted insurer. – An insurer not~~
 5 ~~licensed to do an insurance business in this State. "Nonadmitted insurer"~~
 6 ~~includes insurance exchanges authorized under the laws of various states.~~
 7 ~~"Nonadmitted insurer" does not include a risk retention group, as defined in~~
 8 ~~G.S. 58-22-10(10).~~
- 9 (6) ~~"Producing broker" means an Producing broker. – An insurance producer~~
 10 ~~licensed under Article 33 of this Chapter who deals directly with the party~~
 11 ~~seeking insurance and who may also be a surplus lines licensee.~~
- 12 (6a) ~~"Salary protection insurance" means insurance Salary protection insurance. –~~
 13 ~~Insurance against financial loss caused by the cessation of earned income~~
 14 ~~because of disability from sickness, ailment, or bodily injury.~~
- 15 (7) ~~"Surplus", as Surplus. – As used in the financial requirements of~~
 16 ~~G.S. 58-21-20, means includes funds over and above liabilities and capital of~~
 17 ~~the company for the protection of policyholders.~~
- 18 (8) ~~"Surplus lines insurance" means any Surplus lines insurance. – Any insurance~~
 19 ~~in this State of risks resident, located, or to be performed in this State,~~
 20 ~~permitted to be placed through a surplus lines licensee with a nonadmitted~~
 21 ~~domestic surplus lines insurer or a nonadmitted insurer eligible to accept such~~
 22 ~~that insurance, including salary protection insurance. The term does not~~
 23 ~~include reinsurance, commercial aircraft insurance, wet marine and~~
 24 ~~transportation insurance, insurance independently procured pursuant to~~
 25 ~~G.S. 58-28-5, life and accident or health insurance, and annuities.any of the~~
 26 ~~following:~~
 27 a. Reinsurance.
 28 b. Commercial aircraft insurance.
 29 c. Insurance of property and operations of railroads engaged in interstate
 30 or foreign commerce.
 31 d. Wet marine and transportation insurance.
 32 e. Insurance independently procured pursuant to G.S. 58-28-5.
 33 f. Life and accident or health insurance, and annuities.
 34 g. Personal and commercial automobile liability insurance required to be
 35 written by licensed insurers pursuant to G.S. 58-37-5, excluding
 36 excess automobile liability insurance.
- 37 (9) ~~"Surplus lines licensee" means a Surplus lines licensee. – A person licensed~~
 38 ~~under G.S. 58-21-65 to place insurance on risks resident, located, or to be~~
 39 ~~performed in this State with a nonadmitted domestic surplus lines insurer or~~
 40 ~~with nonadmitted insurers eligible to accept such that insurance.~~
- 41 (10) ~~"Wet marine and transportation insurance" means any Wet marine and~~
 42 ~~transportation insurance. – Includes any of the following:~~
 43 ...
 44 e. Ocean marine insurance, as defined in G.S. 58-48-20."

SECTION 1.(b) G.S. 58-21-40 reads as rewritten:

"§ 58-21-40. Surplus lines regulatory support organization.

- 47 (a) The North Carolina Surplus Lines Association (NCSLA) shall serve as the regulatory
 48 support organization of surplus lines licensees and shall carry out the following functions:
 49 ...
 50 (5) Provide other services to its members that are incidental or related to the
 51 purposes of the association.

1"

2 SECTION 1.(c) G.S. 58-21-85 reads as rewritten:

3 "§ 58-21-85. Surplus lines tax.

4 ...

5 (b) ~~At the same time that he files his quarterly report as set forth in G.S. 58-21-80, each~~
 6 ~~surplus lines licensee shall pay the premium receipts tax due for the period covered by the~~
 7 ~~report.~~ Payment of the premium receipts tax shall be due:

8 (1) For risk purchasing groups, at the same time the licensee files a quarterly
 9 report with the Commissioner.

10 (2) For surplus lines insurers receiving invoices issued by the North Carolina
 11 Surplus Lines Stamping Office SLIP system, 30 days after the end of each
 12 quarter.

13"

14
 15 **PART II. ADJUSTMENT TO AGE REQUIREMENT FOR MANDATORY**
 16 **COLORECTAL CANCER SCREENING COVERAGE**

17 SECTION 2.(a) G.S. 58-3-179 reads as rewritten:

18 "§ 58-3-179. Coverage for colorectal cancer screening.

19 (a) Every health benefit plan, as defined in G.S. 58-3-167, shall provide coverage for
 20 colorectal cancer examinations and laboratory tests for cancer, in accordance with the most
 21 recently published American Cancer Society guidelines or guidelines adopted by the North
 22 Carolina Advisory Committee on Cancer Coordination and Control for colorectal cancer
 23 screening, for any nonsymptomatic covered individual who is:

24 (1) At least ~~50~~45 years of age, or

25 (2) Less than ~~50~~45 years of age and at high risk for colorectal cancer according
 26 to the most recently published colorectal cancer screening guidelines of the
 27 American Cancer Society or guidelines adopted by the North Carolina
 28 Advisory Committee on Cancer Coordination and Control.

29 The same deductibles, coinsurance, and other limitations as apply to similar services covered
 30 under the plan apply to coverage for colorectal examinations and laboratory tests required to be
 31 covered under this section.

32"

33 SECTION 2.(b) This section becomes effective October 1, 2023, and applies to
 34 insurance contracts issued, renewed, or amended on or after that date.

35
 36 **PART III. TECHNICAL CORRECTION TO REFLECT COMPENDIUM NAME**
 37 **CHANGE**

38 SECTION 3.(a) G.S. 58-51-59 reads as rewritten:

39 "§ 58-51-59. Coverage of certain prescribed drugs for cancer treatment.

40 (a) No policy or contract of accident or health insurance, and no preferred provider
 41 benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994,
 42 and that provides coverage for prescribed drugs approved by the federal Food and Drug
 43 Administration for the treatment of certain types of cancer shall exclude coverage of any drug on
 44 the basis that the drug has been prescribed for the treatment of a type of cancer for which the
 45 drug has not been approved by the federal Food and Drug Administration. The drug, however,
 46 must be approved by the federal Food and Drug Administration and must have been proven
 47 effective and accepted for the treatment of the specific type of cancer for which the drug has been
 48 prescribed in any one of the following established reference compendia:

49 ...

50 (2) ~~The ThomsonMicromedex DrugDex;~~ Micromedex DrugDex System;

51"

1 **SECTION 3.(b)** G.S. 58-65-94 reads as rewritten:

2 "**§ 58-65-94. Coverage of certain prescribed drugs for cancer treatment.**

3 (a) No insurance certificate or subscriber contract under any hospital service plan or
4 medical service plan governed by this Article and Article 66 of this Chapter, and no preferred
5 provider benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after
6 January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food
7 and Drug Administration for the treatment of certain types of cancer shall exclude coverage of
8 any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for
9 which the drug has not been approved by the federal Food and Drug Administration. The drug,
10 however, must be approved by the federal Food and Drug Administration and must have been
11 proven effective and accepted for the treatment of the specific type of cancer for which the drug
12 has been prescribed in any one of the following established reference compendia:

13 ...

14 (2) The ~~ThomsonMicromedex DrugDex;~~Micromedex DrugDex System;

15 "

16 **SECTION 3.(c)** G.S. 58-67-78 reads as rewritten:

17 "**§ 58-67-78. Coverage of certain prescribed drugs for cancer treatment.**

18 (a) No health care plan written by a health maintenance organization and in force, issued,
19 renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs
20 approved by the federal Food and Drug Administration for the treatment of certain types of
21 cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the
22 treatment of a type of cancer for which the drug has not been approved by the federal Food and
23 Drug Administration. The drug, however, must be approved by the federal Food and Drug
24 Administration and must have been proven effective and accepted for the treatment of the specific
25 type of cancer for which the drug has been prescribed in any one of the following established
26 reference compendia:

27 ...

28 (2) The ~~ThomsonMicromedex DrugDex;~~Micromedex DrugDex System;

29 "

30
31 **PART IV. CHANGES RELATED TO THE INSURANCE GUARANTY ACT**

32 **SECTION 4.(a)** G.S. 58-48-20 reads as rewritten:

33 "**§ 58-48-20. Definitions.**

34 As used in this Article:

35 (1) ~~"Account" means any Account.~~ – Any one of the three accounts created by
36 G.S. 58-48-25.

37 (1a) ~~"Affiliate" means a Affiliate.~~ – A person who directly, or indirectly, through
38 one or more intermediaries, controls, is controlled by, or is under common
39 control with an insolvent insurer on December 31 of the year next preceding
40 the date the insurer becomes an insolvent insurer.

41 (2) ~~"Association" means the Association.~~ – The North Carolina Insurance
42 Guaranty Association created under G.S. 58-48-25.

43 (2a) ~~"Claimant" means any Claimant.~~ – Any insured making a first party claim or
44 any person instituting a liability claim; provided that no person who is an
45 affiliate of the insolvent insurer may be a claimant.

46 (3) Repealed by Session Laws 1991, c. 720, s. 6.

47 (3a) ~~"Control" means the Control.~~ – The possession, direct or indirect, of the power
48 to direct or cause the direction of the management and policies of a person,
49 whether through the ownership of voting securities, by contract, other than a
50 commercial contract for goods or nonmanagement services, or otherwise,
51 unless the power is the result of an official position with or corporate office

1 held by the person. Control shall be presumed to exist if any person, directly
2 or indirectly owns, controls, holds with the power to vote, or holds proxies
3 representing ten percent (10%) or more of the voting securities of any other
4 person. This presumption may be rebutted by a showing that control does not
5 exist in fact.

6 (4) ~~"Covered claim" means an~~ Covered claim. – An unpaid claim, including one
7 of unearned premiums, which is in excess of fifty dollars (\$50.00) and arises
8 out of and is within the coverage and not in excess of the applicable limits of
9 an insurance policy to which this Article applies as issued by an insurer, if
10 ~~such that~~ insurer becomes an insolvent insurer after the effective date of this
11 Article and (i) the claimant or insured is a resident of this State at the time of
12 the insured event; or (ii) the property from which the claim arises is
13 permanently located in this State. "Covered claim" shall not include any
14 amount awarded (i) as punitive or exemplary damages; (ii) sought as a return
15 of premium under any retrospective rating plan; or (iii) due any reinsurer,
16 insurer, insurance pool, or underwriting association, as subrogation or
17 contribution recoveries or otherwise. "Covered claim" also shall not include
18 fines or penalties, including ~~attorneys~~ attorneys' fees, imposed against an
19 insolvent insurer or its insured or claims of any claimant whose net worth
20 exceeds fifty million dollars (\$50,000,000) on December 31 of the year
21 preceding the date the insurer becomes insolvent.

22 (5) ~~"Insolvent insurer" means~~ Insolvent insurer. – An insurer: (i) ~~an insurer~~
23 licensed and authorized to transact insurance in this State either at the time the
24 policy was issued or when the insured event occurred and (ii) against whom
25 an order of liquidation with a finding of insolvency has been entered after the
26 effective date of this Article by a court of competent jurisdiction in the
27 insurer's state of domicile or of this State under the provisions of Article 30 of
28 this Chapter, and which order of liquidation has not been stayed or been the
29 subject of a writ of supersedeas or other comparable order.

30 (6) ~~"Member insurer" means any~~ Member insurer. – Any person who (i) writes
31 any kind of insurance to which this Article applies under G.S. 58-48-10,
32 including the exchange of reciprocal or interinsurance contracts, and (ii) is
33 licensed and authorized to transact insurance in this State.

34 (7) ~~"Net direct written premiums" means direct~~ Net direct written premiums. –
35 Direct gross premiums written in this State on insurance policies to which this
36 Article applies, less return premiums thereon and dividends paid or credited
37 to policyholders on ~~such that~~ direct business. "Net direct written premiums"
38 does not include premiums on contracts between insurers or reinsurers.

39 (7a) ~~"Ocean marine insurance" includes~~ Ocean marine insurance. – Includes: (i)
40 marine insurance as defined in G.S. 58-7-15(20)a., except for inland marine,
41 (ii) marine protection and indemnity insurance as defined in G.S. 58-7-15(21),
42 and (iii) any other form of insurance, regardless of the name, label, or
43 marketing designation of the insurance policy, which insures against maritime
44 perils or risks and other related perils or risks, which are usually insured by
45 traditional marine insurance such as hull and machinery, marine builders'
46 risks, and marine protection and indemnity. The perils and risks insured
47 against include loss, damage, or expense, or legal liability of the insured for
48 loss, damage, or expense, arising out of, or incident to, ownership, operation,
49 chartering, maintenance, use, repair, or construction of any vessel, craft, or
50 instrumentality in use in ocean or inland waterways, including liability of the
51 insured for personal injury, illness, death, or for loss or damage to the property

of the insured or another person. "Ocean marine insurance" does not include insurance on vessels or vehicles under five tons gross weight.

(8) ~~"Person" means any Person. – Any~~ individual, corporation, partnership, association or voluntary organization.

(9) ~~"Policyholder" means the Policyholder. – The~~ person to whom an insurance policy to which this Article applies was issued by an insurer which has become an insolvent insurer.

(10) ~~"Resident" means: Resident. – Includes all of the following:~~
"

SECTION 4.(b) G.S. 58-48-35 reads as rewritten:

"§ 58-48-35. Powers and duties of the Association.

(a) The Association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination. This obligation includes only the amount of each covered claim that is in excess of fifty dollars (\$50.00) and is less than ~~three hundred thousand dollars (\$300,000).~~ five hundred thousand dollars (\$500,000). However, the Association shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage, and shall pay an amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium. The Association has no obligation to pay a claimant's covered claim, except a claimant's workers' compensation claim, if:

a. The insured had primary coverage at the time of the loss with a solvent insurer equal to or in excess of ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) and applicable to the claimant's loss; or

b. The insured's coverage is written subject to a self-insured retention equal to or in excess of ~~three hundred thousand dollars (\$300,000).~~ five hundred thousand dollars (\$500,000).

If the primary coverage or the self-insured retention is less than ~~three hundred thousand dollars (\$300,000).~~ five hundred thousand dollars (\$500,000), the Association's obligation to the claimant is reduced by the coverage and the retention. The Association shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage to a claimant notwithstanding any self-insured retention, but the Association has the right to recover the amount of the self-insured retention from the employer.

In no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim ~~arises.~~ arises, including any applicable specific and aggregate limits. Notwithstanding any other provision of this Article, a covered claim shall not include any claim filed with the Association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

...."

SECTION 4.(c) Section 4(b) of this act becomes effective October 1, 2023, and applies to covered claims arising from orders of liquidation becoming final on or after that date.

1 **PART V. CHANGES RELATED TO TRANSACTIONS WITHIN AN INSURANCE**
2 **HOLDING COMPANY SYSTEM**

3 **SECTION 5.(a)** G.S. 58-19-30 reads as rewritten:

4 **"§ 58-19-30. Standards and management of an insurer within an insurance holding**
5 **company system.**

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

8 ...

9 (7) If the Commissioner determines that the continued operation of an insurer
10 subject to this Article is hazardous to the insurer's policyholders, creditors, or
11 the general public under G.S. 58-30-60(b), then the Commissioner may
12 require the insurer to elect between securing and maintaining either (i) a
13 deposit held by the Commissioner or (ii) a bond with respect to any contract
14 or agreement entered into by the insurer. The bond or deposit shall be
15 maintained until the existing contract or agreement is no longer affected by
16 the existence of the hazardous condition. The Commissioner shall determine
17 the amount of the deposit or bond, not to exceed the total annual value of the
18 contracts or agreements affected by the existence of the hazardous condition.

19 (8) All records and data of the insurer held by an affiliate remain the property of
20 the insurer and are subject to control of the insurer. For purposes of this
21 subdivision, "records and data" includes claims and claim files, policyholder
22 lists, application files, litigation files, premium records, rate books,
23 underwriting manuals, personnel records, financial records, or similar
24 information within the possession, custody, or control of the affiliate. An
25 affiliate holding the records and data of an insurer shall do all of the following:
26 a. Ensure, at no additional cost to the insurer, that the records and data
27 controlled by the insurer are identifiable and segregated, or readily
28 capable of segregation, from all other persons' records and data.
29 b. Provide to any receiver of the insurer, upon request: (i) a complete set
30 of all records and data of any type that pertain to the insurer's business,
31 (ii) access to the operating systems on which the records and data are
32 maintained, and (iii) the software that runs those systems either
33 through assumption of licensing agreements or otherwise. The
34 receiver may restrict the use of the records and data by the affiliate if
35 the affiliate is not operating the insurer's business.
36 c. In the event of the affiliate's default under a lease or other agreement,
37 secure a waiver of any landlord lien or other encumbrance to provide
38 the insurer access to all records and data.

39 (9) Premiums or other funds belonging to the insurer that are collected by or held
40 by an affiliate are the exclusive property of the insurer and are subject to the
41 control of the insurer. Any right of offset in the event an insurer is placed into
42 receivership shall be subject to Article 30 of this Chapter.

43 (b) The following transactions involving a domestic insurer and any person in its holding
44 company system, including amendments or modifications of affiliated agreements that were
45 previously filed pursuant to this section and that are subject to any materiality standards contained
46 in ~~subdivision (1) through (7) of this section~~ subdivisions (1) through (6) of this subsection, may
47 not be entered into unless the insurer has notified the Commissioner in writing of its intention to
48 enter into the transaction at least 30 days before the transaction, or ~~such a~~ shorter period as the
49 Commissioner permits, and the Commissioner has not disapproved it within that period. The
50 notice for amendments or modifications shall include the reason for the change and the financial
51 impact on the domestic insurer. Informal notice shall be given to the Commissioner, within 30

1 days after termination of a previously filed agreement, so that the Commissioner may determine
2 the type of filing required, if any. An insurer required to give notice of a proposed transaction
3 pursuant to this subsection shall furnish the required information on a Form D, as prescribed by
4 the Commissioner:

- 5 ...
6 (4) All management agreements, service contracts, tax allocation agreements, or
7 cost-sharing ~~arrangements~~. ~~Management agreements, service contracts, and~~
8 ~~cost-sharing arrangements shall at a minimum and shall,~~ as applicable:

9 ...
10 f. Define ~~books and records~~ and data of the insurer to include all ~~books~~
11 ~~and records~~ information developed or maintained under or related to
12 ~~the agreement~~ contract or agreement that are otherwise the property of
13 ~~the insurer~~. The definition of records and data shall include claims and
14 claim files, policyholder lists, application files, litigation files,
15 premium records, rate books, underwriting manuals, personnel
16 records, financial records, or similar information within the
17 possession, custody, or control of the affiliate.

18 g. Specify that all ~~books and records~~ and data of the ~~insurer~~ insurer: (i) remain the property of the insurer and are subject to the
19 control of the insurer; (ii) are subject to the control of the
20 insurer, and (iii) must, at no additional cost to the insurer, be held in a
21 manner that ensures that the records and data controlled by the insurer
22 are identifiable and segregated, or readily capable of segregation, from
23 all other persons' records and data.

24 ...
25 i. Include standards for termination of the contract or agreement with
26 and without cause.

27 j. Include provisions for indemnification of the ~~insurer~~ insurer: (i) in the
28 event of gross negligence or willful misconduct on the part of the
29 affiliate providing the ~~services~~ services or (ii) if the affiliate violates
30 the terms required by sub-subdivisions k. through o. of this
31 subdivision.

32 k. Specify that, if the insurer is placed in supervision, conservatorship, or
33 receivership or seized by the Commissioner under Article 30 of this
34 Chapter:

- 35 1. All of the rights of the insurer under the contract or agreement
36 extend to the receiver ~~receiver, conservator, or Commissioner.~~
37 2. All ~~books and records~~ will immediately be made available to
38 the receiver or the Commissioner and shall be turned over to
39 the receiver or Commissioner immediately upon the receiver's
40 or the Commissioner's request and data of the insurer shall, at
41 no additional cost to the receiver or Commissioner, be
42 identifiable and segregated, or readily capable of segregation,
43 from all other persons' records and data.
44 3. All records and data of the insurer shall be turned over to the
45 receiver or Commissioner immediately upon the receiver's or
46 the Commissioner's request. The records and data shall be
47 turned over in a usable format, and the cost to transfer the
48 records and data to the receiver or the Commissioner shall be
49 fair and reasonable.
50

1 is controlling. The Commissioner will consider the net effect of all of the factors in subdivisions
2 (1) through (11) of this subsection, plus other factors bearing on the financial condition of the
3 insurer. The factors are:

4 ...

5 (f) Any affiliate that is party to an agreement or contract with a domestic insurer that is
6 subject to subdivision (b)(4) of this section shall be subject to the jurisdiction of any supervision,
7 seizure, conservatorship, or receivership proceedings against the insurer and to the authority of
8 the Commissioner or any supervisor, conservator, rehabilitator, or liquidator for the insurer
9 appointed pursuant to Article 30 of this Chapter for the purpose of interpreting, enforcing, and
10 overseeing the affiliate's obligations under the agreement or contract to perform services for the
11 insurer that meet any of the following requirements:

- 12 (1) The services are an integral part of the insurer's operations, including
13 management, administrative, accounting, data processing, marketing,
14 underwriting, claims handling, investment, or any other similar functions.
15 (2) The services are essential to the insurer's ability to fulfill its obligations
16 under insurance policies.

17 The Commissioner may require that an agreement or contract pursuant to subdivision (b)(4)
18 of this section for the provision of services described in subdivisions (1) and (2) of this subsection
19 specify that the affiliate consents to the jurisdiction as set forth in this subsection."

20 **SECTION 5.(b)** This section becomes effective October 1, 2023, and applies to
21 contracts issued, renewed, or amended on or after that date.

22
23 **PART VI. TECHNICAL CORRECTION TO REFLECT REPEAL OF PART 2 OF**
24 **ARTICLE 38 AND ENACTMENT OF ARTICLE 38A OF CHAPTER 1 OF THE**
25 **GENERAL STATUTES**

26 **SECTION 6.** G.S. 58-30-1 reads as rewritten:

27 **"§ 58-30-1. Construction and purpose.**

28 (a) This Article does not limit powers granted to the Commissioner by any other
29 provision of law. To the extent practicable, the Commissioner may supplement the provisions of
30 this Article with those of ~~Part 2 of Article 38~~ Article 38A of Chapter 1 of the General Statutes.

31"

32
33 **PART VII. CHANGES RELATED TO THE ADMINISTRATION OF WORKERS'**
34 **COMPENSATION LARGE DEDUCTIBLE POLICIES AND INSURED COLLATERAL**
35 **IN LIQUIDATION PROCEEDINGS**

36 **SECTION 7.(a)** Article 30 of Chapter 58 of the General Statutes is amended by
37 adding a new section to read:

38 **"§ 58-30-262. Administration of large deductible policies and insured collateral.**

39 (a) Definitions. – The following definitions apply in this section:

40 (1) Association. – As defined in G.S. 58-48-20.

41 (2) Collateral. – Any cash, letters of credit, surety bond, or any other form of
42 security posted by or on behalf of the insured or any person to secure the
43 obligation of the insured under the large deductible policy to pay deductible
44 claims or to reimburse the insurer for deductible claim payments. Collateral
45 may also secure an insured's obligation to reimburse or pay to the insurer as
46 may be required for other secured obligations.

47 (3) Commercially reasonable. – To act in good faith using prevailing industry
48 practices and making all reasonable efforts considering the facts and
49 circumstances of the matter.

- 1 (4) Deductible claim. – Any claim, including a claim for loss and defense and cost
2 containment expense, unless those expenses are excluded, under a large
3 deductible policy that is within the deductible.
- 4 (5) Large deductible policy. – Includes any of the following:
- 5 a. A combination of one or more workers' compensation policies and
6 endorsements issued to an insured and contracts or security
7 agreements entered into between the insurer and the insured in which
8 the insured has agreed with the insurer to do either of the following:
- 9 1. Pay directly the initial portion of any claim under the policy up
10 to a specified dollar amount, or the expenses related to any
11 claim.
- 12 2. Reimburse the insurer for its payment of any claim or related
13 expenses under the policy up to the specified dollar amount of
14 the deductible.
- 15 b. Any policy which contains an aggregate limit on the insured's liability
16 for all deductible claims in addition to a per claim deductible limit.
17 The primary purpose and distinguishing characteristic of a large
18 deductible policy is the shifting of a portion of the ultimate financial
19 responsibility under the large deductible policy to pay claims from the
20 insurer to the insured, even though the obligation to initially pay
21 claims may remain with the insurer.
- 22 c. Any policy with a deductible of one hundred thousand dollars
23 (\$100,000) or greater.
- 24 "Large deductible policy" does not include: (i) policies, endorsements, or
25 agreements which provide that the initial portion of any covered claim shall
26 be self-insured and further that the insurer shall have no payment obligation
27 within the self-insured retention or (ii) policies that provide for retrospectively
28 rated premium payments by the insured or reinsurance arrangements or
29 agreements, except to the extent that those arrangements assume, secure, or
30 pay the large deductible obligations of an insured.
- 31 (6) Other secured obligations. – Obligations of an insured to an insurer other than
32 those under or resulting from a large deductible policy, such as those under a
33 reinsurance agreement or other agreement involving retrospective premium
34 obligations the performance of which is secured by collateral that also secures
35 obligations of an insured under a large deductible policy.
- 36 (b) Applicability. – This section shall apply to workers' compensation large deductible
37 policies insuring workers' compensation liabilities under the Workers' Compensation Act of this
38 State issued by an insurer subject to an order of liquidation as set forth in G.S. 58-30-105 that
39 has become final in the state of entry, whether the liquidation order is entered in this State or in
40 a reciprocal state.
- 41 (c) Exceptions. – This section shall not apply to claims funded by the Association or a
42 foreign guaranty association net of the deductible unless subsection (d) of this section applies.
- 43 (d) Handling of Large Deductible Claims. – Large deductible policies shall be
44 administered in accordance with their terms, except to the extent those terms conflict with this
45 section. All large deductible claims resulting from the handling or administration of one or more
46 covered claims of a claimant as defined by G.S. 58-48-20 or the applicable guaranty laws of a
47 foreign guaranty association, including those that may have been funded by an insured before
48 liquidation, shall be turned over to the Association for handling and administration or shall be
49 turned over to the foreign guaranty association in the state where the claim is pending for
50 handling and administration. To the extent the insured funds or pays the deductible claim,
51 pursuant to an agreement with the Association or a foreign guaranty association or otherwise, the

1 funding or payment of a deductible claim directly or to the Association or a foreign guaranty
2 association by or on behalf of the insured will extinguish the obligations, if any, of the liquidator,
3 the Association, or the foreign guaranty association to pay the claim. No charge or claim of any
4 kind shall be made against the liquidator, the Association, or a foreign guaranty association on
5 the basis of the funding or payment of a deductible claim by or on behalf of an insured.

6 (e) Deductible Claims Paid by the Association or a Foreign Guaranty Association. –

7 (1) To the extent the Association or a foreign guaranty association pays any
8 deductible claim for which the insurer would have been entitled to
9 reimbursement from the insured, the Association or foreign guaranty
10 association shall be entitled to the full amount of the reimbursement and
11 available collateral as provided for under this section to the extent necessary
12 to reimburse the Association or the foreign guaranty association.
13 Reimbursements paid to the Association or to a foreign guaranty association
14 pursuant to this subdivision shall not be included in any proposal submitted to
15 the court to disburse assets under G.S. 58-30-180 in any report submitted to
16 the court under G.S. 58-30-225, or as any distribution of assets by the
17 liquidator in the domiciliary state.

18 (2) To the extent that the Association or a foreign guaranty association pays a
19 deductible claim that is not reimbursed either from collateral or by payments
20 by an insured, or incurred expenses in connection with large deductible
21 policies that are not reimbursed under this section, the Association or a foreign
22 guaranty association shall be entitled to assert a claim for those amounts in the
23 liquidation proceeding in this State or in the domiciliary state.

24 (3) Nothing in this subsection limits any rights of the Association or a foreign
25 guaranty association that may otherwise arise or exist under applicable law to
26 obtain reimbursement from insureds for claim payments made by the
27 Association or the foreign guaranty association under policies of the insurer
28 or for the Association's or foreign guaranty association's related expenses,
29 including without limitation, those rights arising under G.S. 58-48-35 and
30 G.S. 58-48-50, or those arising or existing under similar laws of other states.

31 (f) Collections. –

32 (1) Unless otherwise agreed to with the liquidator of the insurer in this State or
33 the domiciliary state, the Association or a foreign guaranty association shall
34 collect reimbursements owed for deductible claims as provided for herein and
35 shall take all commercially reasonable actions to collect those
36 reimbursements. The Association or a foreign guaranty association shall
37 promptly bill insureds for reimbursement of covered claims paid by the
38 Association or a foreign guaranty association. The liquidator of the insurer in
39 this State or the domiciliary state shall have the obligation to collect all other
40 reimbursements owed for deductible claims and shall promptly bill insureds
41 or the other responsible persons for reimbursement of deductible claims (i)
42 paid by the insurer prior to liquidation or (ii) paid by the liquidator.

43 (2) If the insured does not make payment within the time specified in the large
44 deductible policy, or within 60 days after the date of billing if no time is
45 specified, the liquidator, the Association, or a foreign guaranty association
46 shall take all commercially reasonable actions to collect any reimbursements
47 owed.

48 (3) Neither the insolvency of the insurer, nor its inability to perform any of its
49 obligations under the large deductible policy, shall be a defense to the
50 insured's reimbursement obligations under the large deductible policy.

- 1 (4) Allegations of improper handling or excessive or wrongful payment of a
2 deductible claim by the insurer, by the liquidator of the insurer in this State or
3 the domiciliary state, or by the Association or foreign guaranty association
4 shall not be a defense to the insured's reimbursement obligations under the
5 large deductible policy.
- 6 (5) The liquidator of the insurer in this State or the domiciliary state is entitled to
7 recover through billings to the insured all reasonable expenses incurred in
8 fulfilling the liquidator's collection obligations pursuant to subdivision (1) of
9 this subsection.
- 10 (g) Collateral. –
- 11 (1) Subject to the provisions of this subsection and the rights of the Association
12 or a foreign guaranty association, the liquidator of the insurer in this State or
13 the domiciliary state shall utilize collateral, when available, to secure the
14 obligation of the insured to fund or reimburse deductible claims or other
15 secured obligations. The Association or a foreign guaranty association shall
16 be entitled to all collateral as provided for in this subsection to the extent
17 needed to reimburse the Association or a foreign guaranty association for the
18 payment of deductible claims. Any distributions made to the Association or
19 to a foreign guaranty association pursuant to this subsection shall not be
20 included in any proposal submitted by the liquidator to the court to disburse
21 assets under G.S. 58-30-180, or in any report submitted to the court under
22 G.S. 58-30-225, or as any distribution of assets in the domiciliary state.
- 23 (2) All claims against the collateral shall be paid in the order received, and no
24 claim of the liquidator of the insurer in this State or the domiciliary state,
25 including those described in or arising under this subsection, shall supersede
26 or take priority over any other claim against the collateral made by the
27 Association or a foreign guaranty association. However, to the extent that the
28 collateral is subject to other known secured obligations, or if more than one
29 creditor has a valid claim against the same collateral and the available
30 collateral, including future billing and collection efforts, are together
31 insufficient to pay each creditor in full, the liquidator of the insurer in this
32 State or in the domiciliary state may prorate payments from the proceeds of
33 the collateral based on the ratio of the amount of claims each creditor has to
34 the sum or all claims of all creditors with claims against the involved
35 collateral.
- 36 (3) The liquidator of the insurer in this State or the domiciliary state shall draw
37 down collateral to the extent necessary in the event that the insured fails to do
38 any of the following:
- 39 a. Perform its funding or payment obligations under any large deductible
40 policy.
- 41 b. Pay deductible claim reimbursements within the time specified in the
42 large deductible policy or within 60 days after the date of the billing if
43 no time is specified.
- 44 c. Pay amounts due the estate for pre-liquidation obligations.
- 45 d. Timely fund any other secured obligation.
- 46 e. Timely pay expenses.
- 47 (4) Excess collateral may be returned to the insured as determined by the
48 liquidator of the insurer in this State or the domiciliary state after a periodic
49 review of claims paid, outstanding case reserves and a factor for incurred but
50 not reported claims.

(5) This section shall not limit or adversely affect any rights or powers the Association or a foreign guaranty association may have pursuant to other applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the Association or a foreign guaranty association arising under policies of the insolvent insurer, or for related expenses the Association or a foreign guaranty association incurs.

(6) Notwithstanding any other provision of this section, if the liquidator of the insurer in this State or the domiciliary state and the Association or a foreign guaranty association agree that the liquidator will collect reimbursements owed for deductible claims, the liquidator is entitled to deduct from the large deductible claim collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the large deductible claim collateral and deductible reimbursements."

SECTION 7.(b) This section becomes effective October 1, 2023, and applies to insurance contracts issued, renewed, or amended on or after that date.

PART VIII. TECHNICAL CORRECTION TO ADD OMITTED WORD TO G.S. 58-33-5

SECTION 8. G.S. 58-33-5 reads as rewritten:

"§ 58-33-5. License required.

A person shall not sell, solicit, or negotiate insurance in this State for any kind of insurance unless the person is licensed for that line of authority in accordance with this Article."

PART IX. EFFECTIVE DATE

SECTION 9. Except as otherwise provided, this act is effective when it becomes law.