

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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SENATE BILL 323

Short Title: Insurance Amendments.-AB

(Public)

Sponsors: Senator Apodaca.

Referred to: Insurance.

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, ENSURE
3 ACCURACY IN CERTIFICATES OF INSURANCE, REQUIRE PRIOR APPROVAL OF
4 SMALL GROUP HEALTH INSURANCE RATES AND ENCOURAGE THE SALE OF
5 CHILD-ONLY HEALTH INSURANCE POLICIES, AMEND THE RISK-BASED
6 CAPITAL LAW TO MAINTAIN NAIC ACCREDITATION, PROVIDE AN
7 EXEMPTION FOR LICENSING OF CLAIMS INPUT EMPLOYEES FOR PORTABLE
8 ELECTRONIC DEVICES, PROHIBIT FEDERAL PREEMPTION OF CROP
9 ADJUSTERS' REGULATION, AND EASE THE REGULATORY BURDEN ON THE
10 ASSOCIATION AGGREGATE SECURITY SYSTEM.

11 The General Assembly of North Carolina enacts:

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

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

35 **SECTION 2.** G.S. 58-3-150 reads as rewritten:

36 **"§ 58-3-150. Forms to be approved by Commissioner.**



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

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

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

18 (d) A certificate of insurance is not a policy of insurance and does not amend, extend,
19 or alter the coverage afforded by the policy to which the certificate of insurance makes
20 reference. A certificate of insurance shall not confer to a certificate holder new or additional
21 rights beyond what the referenced policy of insurance expressly provides.

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

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

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

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

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

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

39 **SECTION 3.** Article 50 of Chapter 58 is amended by adding the following new
40 section to read:

41 **"§ 58-50-131. Premiums for health benefit plans; approval authority; hearing.**

42 (a) No schedule of premiums for coverage for a health benefit plan subject to this act,
43 or any amendment to the schedule, shall be used in conjunction with any such health benefit
44 plan until a copy of the schedule of premiums or amendment has been filed with and approved
45 by the Commissioner. Any schedule of premiums or amendment filed under this section shall
46 be established in accordance with G.S. 58-50-130(b). The schedule of premiums shall not be
47 excessive, inadequate, or unfairly discriminatory, and shall exhibit a reasonable relationship to
48 the benefits provided by the contract of insurance. Each filing shall include a certification by an
49 individual who is a member in good standing with the Society of Actuaries.

50 (b) The Commissioner shall approve or disapprove a schedule of premium rates within
51 60 days of receipt of a complete filing. It shall be unlawful to use a schedule of premiums until

1 approved. If the Commissioner disapproves the filing, the Commissioner shall notify the filer,
2 shall specify the reasons for disapproval, and shall provide an opportunity for refiling and for
3 requesting a hearing. A hearing shall be granted within a reasonable period from the date the
4 request is submitted to the Commissioner in writing by the person filing.

5 (c) The Commissioner shall adopt rules as necessary or proper (i) to prevent the federal
6 preemption of health insurance regulation in the State and (ii) to implement the provisions of
7 this section and (iii) to establish minimum standards for loss ratios of policies subject to this
8 section on the basis of incurred claims experience and earned premium in accordance with
9 accepted actuarial principles and practices to assure that the benefits are reasonable in relation
10 to the premium charged. The Commissioner shall adopt rules to require the submission of
11 supporting data and any information that the Commissioner considers necessary or proper to
12 determine whether the filed schedule of premiums meets the standards set forth in this section."

13 **SECTION 4.** Article 3 of Chapter 58 of the General Statutes is amended by adding
14 the following new section to read:

15 **"§ 58-3-285. Nondependent child coverage defined; open enrollment.**

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

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

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

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

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

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

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

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

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

40 **SECTION 5.** G.S. 58-12-2 reads as rewritten:

41 **"§ 58-12-2. Definitions.**

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

43 (1) Adjusted risk-based capital report. – A risk-based capital report that has been
44 adjusted by the Commissioner under G.S. 58-12-6.

45 (2) Corrective order. – An order issued by the Commissioner specifying
46 corrective actions that the Commissioner has determined are required.

47 (3) Domestic insurer. – Any insurance company or health organization
48 organized in this State under ~~Article 7,~~ Article 7 of this Chapter as specified
49 in subdivisions (4b) and (5a) of this section, or under Article 15, 65, or 67
50 of this Chapter.

- 1 (4) Foreign insurer. – Any insurance company or health organization that is
2 admitted to do business in this State under Article 16 or 67 of this Chapter
3 but is not domiciled in this State.
- 4 (4a) Health organization. – Any insurer which is required by the Commissioner
5 to use the NAIC Health Annual Statement Blank when filing the annual
6 statement prescribed by G.S. 58-2-165 or any health maintenance
7 organization, limited health service organization, dental or vision plan,
8 hospital, medical, or dental indemnity or service corporation, or other
9 organization licensed under Article 65 or 67 of this Chapter. "Health
10 organization" does not include an insurer that is licensed as either a life or
11 health insurer or a property or casualty insurer under this Chapter and that is
12 otherwise subject to either the life or property and casualty risk-based capital
13 requirements.
- 14 (4b) Life or health insurer. – Any insurance company licensed to write the kinds
15 of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property
16 and casualty insurer writing only the kinds of insurance specified in
17 G.S. 58-7-15(3). "Life or health insurer" does not mean any insurer that is
18 required by the Commissioner to sue the NAIC Health Annual Statement
19 Blank when it files the annual statement prescribed by G.S. 58-2-165.
- 20 (5) Negative trend. – A negative trend, with respect to a life or health insurer,
21 over a period of time, as determined in accordance with the "trend test
22 calculation" included in the risk-based capital instructions.
- 23 (5a) Property or casualty insurer. – Any insurance company licensed to write the
24 kinds of insurance specified in G.S. 58-7-15(4) through (22); but not
25 monoline mortgage guaranty insurers, financial guaranty insurers, or title
26 ~~insurers-insurers;~~ nor any insurer that is required by the Commissioner to use
27 the NAIC Health Annual Statement Blank when filing the annual statement
28 prescribed by G.S. 58-2-165.
- 29 (6) Risk-based capital instructions. – The risk-based capital report including
30 risk-based capital instructions adopted by the NAIC, as those risk-based
31 capital instructions may be amended by the NAIC from time to time in
32 accordance with the procedures adopted by the NAIC.
- 33 (7) Risk-based capital level. – An insurer's company action level risk-based
34 capital, regulatory action level risk-based capital, authorized control level
35 risk-based capital, or mandatory control level risk-based capital where:
36 a. "Company action level risk-based capital" means, with respect to any
37 insurer, the product of 2.0 and its authorized control level risk-based
38 capital.
39 b. "Regulatory action level risk-based capital" means the product of 1.5
40 and its authorized control level risk-based capital.
41 c. "Authorized control level risk-based capital" means the number
42 determined under the risk-based capital formula in accordance with
43 the risk-based capital instructions.
44 d. "Mandatory control level risk-based capital" means the product of
45 .70 and the authorized control level risk-based capital.
- 46 (8) Risk-based capital plan. – A comprehensive financial plan containing the
47 elements specified in G.S. 58-12-11(b). If the Commissioner rejects the
48 risk-based capital plan, and it is revised by the insurer, with or without the
49 Commissioner's recommendation, the plan shall be called the "revised
50 risk-based capital plan".
- 51 (9) Risk-based capital report. – The report required in G.S. 58-12-6.

- 1 (10) Total adjusted capital. – The sum of:
 2 a. An insurer's statutory capital and surplus, as determined in
 3 accordance with the statutory accounting applicable to the annual
 4 financial statements required under G.S. 58-2-165; and
 5 b. Such other items, if any, as the risk-based capital instructions may
 6 provide."

7 **SECTION 6.** G.S. 58-12-11(a) reads as rewritten:

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

- 9 (1) The filing of a risk-based capital report by an insurer that indicates that:
 10 a. The insurer's total adjusted capital is greater than or equal to its
 11 regulatory action level risk-based capital but less than its company
 12 action level risk-based capital, ~~if the insurer is a property or casualty~~
 13 ~~insurer or a health organization; capital; or~~
 14 b. ~~The~~ In the case of a life or health insurer, the insurer has total
 15 adjusted capital that is greater than or equal to its company action
 16 level risk-based capital but less than the product of its authorized
 17 control level risk-based capital and 2.5 and has a negative trend, if
 18 the insurer is a life or health insurer; trend; or
 19 c. In the case of a property or casualty insurer or a health organization,
 20 the insurer has total adjusted capital that is greater than or equal to its
 21 company action level risk-based capital but less than the product of
 22 its authorized control level risk-based capital and 3.0 and triggers the
 23 trend test determined in accordance with the trend test calculation
 24 included in the property and casualty or health organization
 25 risk-based capital instructions.
 26 (2) The notification by the Commissioner to the insurer of an adjusted ~~risk-based~~
 27 risk-based capital report that indicates the event in sub-subdivision (1)a. or
 28 b.(1)a., (1)b., or (1)c. of this subsection if the insurer does not challenge the
 29 adjusted risk-based capital report under G.S. 58-12-30.
 30 (3) If the insurer challenges an adjusted risk-based capital report that indicates
 31 the event in sub-subdivision ~~(1)a. or b.~~ (1)a., (1)b., or (1)c. of this subsection
 32 under G.S. 58-12-30, the notification by the Commissioner to the insurer that
 33 the Commissioner has rejected the insurer's challenge."

34 **SECTION 7.** Article 33 of Chapter 58 of the General Statutes is amended by
 35 adding a new section to read:

36 **§ 58-33-27. Claims handling; insurance on portable consumer electronic devices.**

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

- 38 (1) "Automated claims adjudication system" means a preprogrammed computer
 39 system designed for the collection, data entry, calculation, and system
 40 generated final resolution of claims on insurance policies that cover portable
 41 consumer electronic devices, which system shall meet the following criteria:
 42 a. Be utilized only by a licensed adjuster or licensed producer or
 43 supervised individuals operating pursuant to this section.
 44 b. Comply with all claims payment requirements of this Chapter.
 45 c. Be certified as compliant with this section by a licensed adjuster who
 46 is an officer of a licensed business entity under this Chapter.
 47 (2) "Portable consumer electronic devices" include the following, which must be
 48 easily carried or conveyed by hand: smartphones, navigation devices,
 49 cellular phones, personal digital assistants, iPads, iPhones, Androids, video
 50 games, wireless reading devices, laptops, tablets, netbooks, MP3 players,

1 digital cameras and other electronic devices that are portable in nature, their
2 accessories, and services related to the use of the device.

3 (b) No adjuster license is required for an individual who, in connection with insurance
4 on portable consumer electronic devices, collects claim information from or furnishes claim
5 information to insureds or claimants, who conducts data entry, including entering data into an
6 automated claims adjudication system, and who does not exercise any discretion in the
7 disposition of the claim; provided that the individual is an employee of a licensee under this
8 Chapter or an employee of a licensee under this Chapter, if there are no more than 25
9 individuals under the supervision of a licensed individual adjuster or a licensed individual
10 producer who may adjust claims in accordance with G.S. 58-33-70(b). A producer who is
11 acting as a supervisor pursuant to this section is not required to be licensed as an adjuster."

12 **SECTION 8.** G.S. 58-33-30(e) reads as rewritten:

13 "(e) Examination.

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

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

29 (2a) Adjusters who adjust federal crop insurance claims shall be certified as
30 having passed a proficiency examination approved by the federal Risk
31 Management Agency (RMA) as a condition of obtaining an adjuster's license
32 under this Chapter, or another proficiency examination approved by the
33 Commissioner. An adjuster who intends to adjust crop insurance claims shall
34 furnish the Commissioner proof that the adjuster is certified as having
35 passed the required examination pursuant to this section.

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

- 38 a. The terms and provisions of the policies or contracts of insurance the
39 applicant proposes to effect; or
- 40 b. The types of claims or losses the applicant proposes to adjust; and
- 41 c. The duties and responsibilities of the license; and
- 42 d. The current laws of this State applicable to the license.

43 (4) The answers of the applicant to the examination shall be provided by the
44 applicant under the Commissioner's supervision. The Commissioner shall
45 give examinations at such times and places within this State as the
46 Commissioner considers necessary reasonably to serve the convenience of
47 both the Commissioner and applicants: Provided that the Commissioner may
48 contract directly with persons for the processing of examination application
49 forms and for the administration and grading of the examinations required
50 by this section; the Commissioner may charge a reasonable fee in addition to
51 the registration fee charged under G.S. 58-33-125, to offset the cost of the

1 examination contract authorized by this subsection; and such contracts shall
2 not be subject to Article 3 of Chapter 143 of the General Statutes. However,
3 the Commissioner shall: (i) submit all proposed statewide and agency term
4 agreements or contracts for supplies, materials, printing, equipment, and
5 contractual services that exceed one million dollars (\$1,000,000) authorized
6 by this subdivision to the Attorney General or the Attorney General's
7 designee for review as provided in G.S. 114-8.3; and (ii) include in all
8 contracts to be awarded by the Commissioner under this subdivision a
9 standard clause which provides that the State Auditor and internal auditors
10 of the Commissioner may audit the records of the contractor during the term
11 of the contract to verify accounts and data affecting fees and performance.
12 The Commissioner shall not award a cost plus percentage of cost contract for
13 any purpose.

14 (5) The Commissioner shall collect in advance the examination and registration
15 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The
16 Commissioner shall make or cause to be made available to all applicants, for
17 a reasonable fee to offset the costs of production, materials that he considers
18 necessary for the applicants' proper preparation for examinations. The
19 Commissioner may contract directly with publishers and other suppliers for
20 the production of the preparatory materials, and contracts so let by the
21 Commissioner shall not be subject to Article 3 of Chapter 143 of the General
22 Statutes. However, the Commissioner shall: (i) submit all proposed
23 statewide and agency term contracts for supplies, materials, printing,
24 equipment, and contractual services that exceed one million dollars
25 (\$1,000,000) authorized by this subdivision to the Attorney General or the
26 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)
27 include in all contracts to be awarded by the Commissioner under this
28 subdivision a standard clause which provides that the State Auditor and
29 internal auditors of the Commissioner may audit the records of the
30 contractor during the term of the contract to verify accounts and data
31 affecting fees and performance. The Commissioner shall not award a cost
32 plus percentage of cost contract for any purpose.

33 (6) In addition to the examinations for the kinds of insurance specified in
34 G.S. 58-33-25(c)(1) and (2), before any resident may sell Medicare
35 supplement or long-term care insurance policies defined respectively in
36 Articles 54 and 55 of this Chapter, the resident must take and pass a
37 supplemental written examination according to requirements prescribed by
38 the Commissioner.

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

42 **SECTION 9.** G.S. 97-132 reads as rewritten:

43 **"§ 97-132. Board of directors.**

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

51 **SECTION 10.** G.S. 97-133 reads as rewritten:

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

(a) The Association shall:

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

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

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

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

a. ~~The Association shall annually prepare and submit to the Commissioner a written plan to provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance~~ insurance, reinsurance, or other financial instruments or guarantees owned or entered into by the Association ~~and acceptable to the Commissioner.~~ Association. ~~The written plan shall include, but not be limited to, (i) a description of the institutions that will issue or guarantee the securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees, including, but not limited to, the credit rating, financial strength, and AM best rating, if applicable to the institutions (ii) applicable cash flow information and financial assumptions (iii) a description of the methodology to be used by the Association to assess and collect the Association Aggregate Security System assessments to be made pursuant to subdivision (3a) of this subsection and (iv) a proposed timetable for the release of existing individual company deposits posted pursuant to G.S. 97-185(c), provided, however, that no individual company deposits posted pursuant to G.S. 97-185(c) shall be released without the written consent of the Commissioner. The~~

- 1 ~~noncash elements of the composite security may be one-year or~~
2 ~~multiple year instruments.~~
- 3 ~~b. Within 90 days following the submission of the initial plan under~~
4 ~~sub subdivision a. of this subdivision, the Commissioner shall either~~
5 ~~approve or disapprove the initial plan and shall notify the Association~~
6 ~~in writing. If the Commissioner does not approve or disapprove the~~
7 ~~initial plan within 90 days following submission, then the initial plan~~
8 ~~shall be deemed to be approved by the Commissioner. All~~
9 ~~subsequent plans shall be either approved or disapproved within 60~~
10 ~~days following submission.~~
- 11 ~~e. The Commissioner shall also determine the total undiscounted claims~~
12 ~~liability of each individual self-insurer that will participate in the~~
13 ~~Association Aggregate Security System as well as the aggregate total~~
14 ~~undiscounted outstanding claims liabilities of all the individual~~
15 ~~self-insurers that are to participate in the Association Aggregate~~
16 ~~Security System and shall notify the Association of this~~
17 ~~determination.~~
- 18 ~~d. Upon approval by the Commissioner of the Association's plan for the~~
19 ~~Association Aggregate Security System, the The Association shall~~
20 ~~assess the individual self-insurers that participate in the Association~~
21 ~~Aggregate Security System pursuant to subdivision (3a) of this~~
22 ~~subsection.~~
- 23 ~~e. If the Commissioner disapproves the plan for any year, If the~~
24 ~~Association determines it is not feasible or practical to continue the~~
25 ~~Association Aggregate Security System, it shall notify the~~
26 ~~Commissioner at least 90 days prior to the termination of the~~
27 ~~Association Aggregate Security System. every Every~~
28 ~~self-insurer shall deposit with the Commissioner, or continue to deposit, the~~
29 ~~amount required by G.S. 97-185(b3) in the manner prescribed by~~
30 ~~G.S. 97-185(c).~~
- 31 f. Group self-insurers shall not participate in the Association Aggregate
32 Security System.
- 33 (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 34 (3a) Assess members of the Association as follows:
- 35 a. Association Aggregate Security System assessments. – The
36 Association shall assess each individual self-insurer participating in
37 the Association Aggregate Security System a security system
38 assessment. The amount of the security system assessment charged to
39 each individual self-insurer participating in the Association
40 Aggregate Security System shall be based on the Association's
41 reasonable consideration of all of the following factors:
- 42 1. The total amount of assessments necessary to provide
43 aggregate security for all participating individual
44 self-insurers.
- 45 2. The individual self-insurer's total workers' compensation
46 liabilities under the Act.
- 47 3. The financial strength and creditworthiness of the
48 participating individual self-insurer.
- 49 4. Any other relevant factors.
- 50 b. Special assessment. – In the event that there are covered claims
51 against an insolvent member or members and the assets of the Fund

- 1 are not sufficient to pay the obligations of the Association, then the
2 Association may collect a special assessment from the members in an
3 amount sufficient to pay the aggregate value of such covered claims.
4 Each member's special assessment shall be determined by the Board
5 and shall be based on the proportion of the member's total obligations
6 under the Act to the aggregate total of all members' obligations under
7 the Act.
- 8 c. Initial assessments. – An individual self-insurer that becomes a
9 member and does not initially participate in the Association
10 Aggregate Security System shall pay an initial assessment to the
11 Association in an amount determined by the Board. A group
12 self-insurer, upon receiving its initial license from the Commissioner,
13 shall pay an initial assessment to the Association in an amount
14 determined by the Board.
- 15 d. Each member shall be notified of assessments no later than 30 days
16 before the assessment is due.
- 17 e. Delinquent assessments, except as otherwise provided, shall bear
18 interest at a rate to be established by the Board.
- 19 f. Group assessments. – The Association may annually assess each
20 member group self-insurer in an amount not to exceed two percent
21 (2%) of the group self-insurer's annual gross premiums for the
22 preceding calendar year, as determined under G.S. 105-228.5(b),
23 (b1), and (c).
- 24 (4) Be obligated to pay covered claims.
- 25 (5) After paying any covered claim, be subrogated to the rights of the injured
26 employee and dependents and be entitled to enforce liability against the
27 self-insurer or any third party by any appropriate action brought in its own
28 name or in the name of the injured employee and dependents.
- 29 (6) Expend Fund assets in amounts necessary to pay all of the following:
- 30 a. The obligations of the Association under this Article subsequent to
31 an insolvency.
- 32 b. The expenses of handling covered claims subsequent to an
33 insolvency.
- 34 c. The cost of examinations under G.S. 97-137.
- 35 d. The costs of implementing and operating the Association Aggregate
36 Security System.
- 37 e. All other expenses authorized by this Article.
- 38 (7) Investigate claims brought against the Association and adjust, compromise,
39 settle, and pay covered claims to the extent of the Association's obligation;
40 and deny all other claims. The Association may review settlements to which
41 the insolvent member was a party to determine the extent to which such
42 settlements may be properly contested.
- 43 (8) Notify such persons as the Commissioner directs under G.S. 97-136.
- 44 (9) Handle claims through its directors, its employees, or through one or more
45 members or other persons designated as servicing facilities. ~~Designation of a~~
46 ~~servicing facility is subject to the approval of the Commissioner, but~~
47 ~~designation~~ of a member as a servicing facility may be declined by such
48 member.
- 49 (10) Reimburse each servicing facility for obligations of the Association paid by
50 the facility and for expenses incurred by the facility while handling claims
51 on behalf of the Association.

- 1 (11) Pay any other expenses of the Association authorized by this section.
2 (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
3 (13) Require each member to determine annually its total undiscounted claims
4 liability and shall require each member to notify the Association of this
5 determination.
- 6 (b) The Association may:
- 7 (1) Employ or retain such persons, including, but not limited to, adjustors,
8 brokers, accountants, attorneys, financial advisors, investment bankers,
9 placement agents, and consultants, as the Board may determine are
10 necessary to handle claims, perform other duties of, provide services to, and
11 consult with the Association.
- 12 (2) Borrow funds necessary to effect the purposes of this Article in accord with
13 the Plan, including entering into standby lines of credit.
- 14 (3) Sue or be sued.
- 15 (4) Negotiate and become a party to such contracts as are necessary to carry out
16 the purpose of this section.
- 17 (5) Perform such other acts as are necessary or proper to effectuate the purpose
18 of this section.
- 19 ~~(6) Reimburse the Department of Insurance up to twenty thousand dollars~~
20 ~~(\$20,000) for consultants retained by the Department to review the initial~~
21 ~~plan submitted pursuant to G.S. 97-133(a)(2a).~~
- 22 (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 23 (c1) The Association shall provide in its Plan that the functions of administration and
24 adjusting claims shall not be performed by the same entity that provides legal representation to
25 the Association for claims.
- 26 (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006."

27 **SECTION 11.** G.S. 97-134 reads as rewritten:

28 "**§ 97-134. Plan of Operation.**

29 The Plan is as follows:

- 30 (1) ~~The Association Board shall submit to the Commissioner adopt a Plan of~~
31 ~~Operation and any amendments necessary or suitable to assure the fair,~~
32 ~~reasonable, and equitable administration of the Association. The Plan and~~
33 ~~any amendments become effective upon approval in writing by the~~
34 ~~Commissioner. If the Association at any time fails to submit a suitable Plan~~
35 ~~or suitable amendment to the Plan the Commissioner shall, after notice and~~
36 ~~hearing, adopt such reasonable rules as are necessary or advisable to~~
37 ~~effectuate this Article. The rules shall continue in force until modified by the~~
38 ~~Commissioner or superseded by a Plan submitted by the Association and~~
39 ~~approved by the Commissioner.~~
- 40 (2) All member self-insurers shall comply with the Plan.
- 41 (3) The Plan shall:
- 42 a. Establish the procedures whereby all the powers and duties of the
43 Association under G.S. 97-133 will be performed.
- 44 b. Establish procedures for investing and managing Fund assets.
- 45 c. Adopt a reasonable mechanism and procedure to achieve equity in
46 assessing members under G.S. 97-133.
- 47 d. Establish the amount and method of reimbursing members of the
48 Board under G.S. 97-132.
- 49 e. Establish procedures by which claims may be filed with the
50 Association and establish acceptable forms of proof of covered
51 claims.

- 1 f. Establish regular places and times for meetings of the Board.
2 g. Establish procedures for records to be kept of all financial
3 transactions of the Association, its agents, and the Board.
4 h. Provide that any member self-insurer aggrieved by any final action or
5 decision of the Association may appeal to the Commissioner within
6 30 days after the action or decision.
7 ~~i. Establish the procedures whereby selections for the Board shall be~~
8 ~~submitted to the Commissioner.~~
9 j. Contain additional provisions necessary or proper for the execution
10 of the powers and duties of the Association."

11 **SECTION 12.** G.S. 97-136(a) reads as rewritten:

12 **"§ 97-136. Powers and duties of the Commissioner.**

13 (a) The Commissioner shall:

- 14 (1) Notify the Association of the existence of an insolvent member self-insurer
15 not later than 30 days after he receives notice of an insolvency pursuant to
16 the standards set forth in G.S. 97-135.
17 ~~(2) Approve or disapprove the plan for an Association Aggregate Security~~
18 ~~System as required under G.S. 97-133(a)(2a)b. and notify the Association of~~
19 ~~the information required under G.S. 97-133(a)(2a)e."~~

20 **SECTION 13.** G.S. 97-137 reads as rewritten:

21 **"§ 97-137. Examination of the Association.**

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

25 **SECTION 14.** G.S. 97-185 reads as rewritten:

26 **"§ 97-185. Deposits; surety bonds; letters of credit.**

27 (a) Repealed by Session Laws 2005-400, s. 13, effective January 1, 2006.

28 (a1) All individual self-insurers as defined in G.S. 97-130(5b) shall participate in the
29 Association Aggregate Security System established under G.S. 97-131 unless excluded by the
30 Board of Directors of the North Carolina Self-Insurance Security Association. The Board of
31 Directors of the North Carolina Self-Insurance Security Association shall exclude all of the
32 following from the Association Aggregate Security System:

- 33 (1) Individual self-insurers whose licenses have previously been revoked by the
34 Commissioner.
35 (2) Individual self-insurers with a debt rating as established by Standard &
36 Poor's Rating Service or by Moody's Investor Service, below the minimum
37 Standard & Poor's ~~and or~~ Moody's ratings if a minimum debt rating has been
38 established in the written plan by the Board of Directors of the North
39 Carolina Self-Insurance Security Association for the Association Aggregate
40 Security System submitted by the Association and approved by the
41 Commissioner under G.S. 97-133(a)(2a).System.
42 (3) Individual self-insurers that have defaulted on the payment of their
43 self-insured workers' compensation liabilities.
44 (4) Individual self-insurers that fail to submit sufficient financial information to
45 enable the Association to determine their total outstanding workers'
46 compensation liabilities, or their creditworthiness, or both.

47 The Board of Directors of the North Carolina Self-Insurance Security Association shall
48 notify the Commissioner of the individual self-insurers that are excluded from participating in
49 the Association Aggregate Security System.

50 (b) Repealed by Session Laws 2003-115, s. 3, effective January 1, 2004.

51 (b1) Repealed by Session Laws 2005-400, s. 13, effective January 1, 2006.

1 (b2) An individual self-insurer that is excluded from participation in the Association
2 Aggregate Security System, including individual self-insurers that are granted a license to
3 self-insure after the North Carolina Self-Insurance Security Association annually implements
4 the Association Aggregate Security System, shall deposit with the Commissioner an amount
5 not less than one hundred percent (100%) of the individual self-insurer's total undiscounted
6 outstanding claims liability per the most recent report from a qualified actuary as required by
7 G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such greater
8 amount as the Commissioner prescribes based on, but not limited to, the financial condition of
9 the individual self-insurer and the risk retained by the individual self-insurer.

10 (b3) During any period of time that no Association Aggregate Security System is in
11 effect, individual self-insurers with a debt rating of BBB or better from Standard & Poor's
12 Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national
13 rating agency shall deposit with the Commissioner an amount not less than fifty percent (50%)
14 of the individual self-insurer's total undiscounted outstanding claims liability per the most
15 recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five
16 hundred thousand dollars (\$500,000). An individual self-insurer licensed pursuant to
17 G.S. 97-177 may utilize the debt rating of its guarantor for the purpose of establishing the
18 application of this subsection. The Commissioner shall consider and may, in the
19 Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of
20 the individual self-insurer's claims liability based on the financial strength of the individual
21 self-insurer and other financial information submitted by the individual self-insurer. All other
22 individual self-insurers shall deposit with the Commissioner an amount not less than one
23 hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims
24 liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but
25 not less than five hundred thousand dollars (\$500,000), or such greater amount as the
26 Commissioner prescribes based on, but not limited to, the financial condition of the individual
27 self-insurer and the risk retained by the individual self-insurer.

28 (c) Deposits received, changes to existing deposits, or deposits exchanged after the
29 effective date of this section, shall be comprised of one or more of the following:

- 30 (1) Interest-bearing bonds of the United States of America.
- 31 (2) Interest-bearing bonds of the State of North Carolina, or of its cities or
32 counties.
- 33 (3) Certificates of deposit issued by any solvent bank domesticated in the State
34 of North Carolina that have a maturity of one year or greater.
- 35 (4) Surety bonds in a form acceptable to the Commissioner and issued by a
36 corporate surety. A surety bond deposited pursuant to this subsection shall
37 require that the surety reimburse the Commissioner, or his successors,
38 assigns, or transferees, for any costs incurred in the collection of the
39 proceeds of the surety bond, including reasonable attorneys' fees, and any
40 costs incurred in administering the insolvent self-insurer's workers'
41 compensation claims.
- 42 (4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued
43 by a bank acceptable to the Commissioner. An irrevocable letter of credit
44 deposited pursuant to this subsection shall require that the bank reimburse
45 the Commissioner, or his successors, assigns, or transferees for any costs
46 incurred in the collection of the proceeds of the letter of credit, including
47 reasonable attorneys' fees.
- 48 (4b) The reimbursement of attorneys' fees and collections cost provided for in
49 subdivisions (4) and (4a) of this subsection shall be no greater than fifteen
50 percent (15%) of the penal amount of the bond and shall not come from the

1 proceeds of the bond or the letter of credit but shall be in addition to the
2 proceeds of the bond or the letter of credit.

3 (5) Any other investments that are approved by the Commissioner.

4 (d) All bonds or securities that are posted as a security deposit shall be valued annually
5 at market value. If the market value is less than the face value, the Commissioner may require
6 the self-insurer to post additional securities. In making this determination, the Commissioner
7 shall consider the self-insurer's or guarantor's financial condition, the amount by which market
8 value is less than face value, and the likelihood that the securities will be needed to provide
9 benefits.

10 (e) Securities deposited under this section shall be assigned to the Commissioner, the
11 Commissioner's successors, assigns, or trustees, on a form prescribed by the Commissioner in a
12 manner that renders the securities negotiable by the Commissioner. If a self-insurer or
13 guarantor is deemed by the Commissioner to be in a hazardous financial condition, the
14 Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet
15 the self-insurer's obligations under the Act. In the case of a letter of credit, the Commissioner
16 may draw the full amount of a letter of credit if the letter of credit is not renewed within 90
17 days prior to its expiration or at any time that the bank issuing the letter of credit is no longer
18 acceptable to the Commissioner. Interest accruing on any negotiable security deposited under
19 this Article shall be collected and transmitted to the self-insurer if the self-insurer or guarantor
20 is not in a hazardous financial condition.

21 (f) No judgment creditor, other than a claimant entitled to benefits under the Act, may
22 levy upon any deposits made under this section.

23 (g) Pursuant to the provisions of this section and with the approval of the
24 Commissioner, deposits held by the Commissioner may be replaced with other acceptable
25 forms of deposit in amount determined by the Commissioner. Any deposit to be replaced with
26 another form of deposit shall not be released until the approved replacement deposit is received
27 by the Commissioner.

28 (h) Any self-insurer that ceases to self-insure, whether by voluntary termination or by
29 revocation of license, shall continue to secure and be liable for its obligations under the Act and
30 shall continue to report to the Commissioner pursuant to G.S. 97-180. Upon the request of the
31 Commissioner, a self-insurer that ceases to self-insure shall submit filings, as prescribed in
32 G.S. 97-180, to determine whether the deposit is sufficient to satisfy those workers'
33 compensation obligations incurred during the period that the self-insurer was licensed as a
34 self-insurer. The Commissioner may require an increase in the deposit amount or may grant a
35 reduction in the deposit amount to ensure that the deposit is sufficient to cover all existing and
36 future obligations incurred by the self-insurer while subject to the provisions of the Act.

37 (i) An endorsement to a surety bond shall be filed with the Commissioner within 90
38 days after the effective date of the endorsement."

39 **SECTION 15.** Sections 1, 3, and 9 through 14 of this act become effective July 1,
40 2011. Sections 2, 4, 5, and 6 of this act become effective October 1, 2011. Section 7 of this act
41 becomes effective July 1, 2012, and applies to licenses issued on or after that date. The
42 remainder of this act is effective when it becomes law.