

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2011-196  
HOUSE BILL 298

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

(a) It is unlawful for any insurance company licensed and admitted to do business in this State to issue, sell, or dispose of any policy, contract, ~~or certificate,~~ or certificate of



insurance, or use applications in connection therewith, until the forms of the same have been submitted to and approved by the Commissioner, and copies filed in the Department. If a policy form filing is disapproved by the Commissioner, the Commissioner may return the filing to the filer. As used in this section, "policy form" includes endorsements, riders, or amendments to policies that have already been approved by the Commissioner.

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

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

(d) As used in this section, "certificate of insurance" means a document prepared or issued by an insurance company or producer that is used to verify or evidence the existence of property or casualty insurance coverage. "Certificate" or "certificate of insurance" shall not include a document prepared or issued by an insurance company or producer that is used to verify or evidence the existence of property insurance provided to a lender covering real or personal property which serves as the lender's security for commercial mortgages. For purposes of this section, "commercial mortgages" shall mean mortgages or other instruments given for the purpose of creating a lien encumbering office, multiunit residential, apartments, commercial, or industrial properties. Commercial mortgages shall not include a lien encumbering one- to four-family residential properties.

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

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

- (1) Has not been filed with and approved by the Commissioner.
- (2) Contains any false or misleading information concerning the policy of insurance to which the certificate of insurance makes reference.
- (3) Purports to alter, amend, or extend the coverage provided by the policy of insurance to which the certificate of insurance makes reference.

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

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

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

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

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

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

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

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

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

- (1) "Health benefit plan" has the same meaning as G.S. 58-3-167(a)(1).
- (2) "Individual market" has the same meaning as G.S. 58-68-25(a)(9).
- (3) "Insurer" has the same meaning as G.S. 58-3-167(a)(2).
- (4) "Nondependent child coverage" or "nondependent child policy" means an individual health benefit plan which provides coverage to an individual under age 19. This shall not include health benefit plans that cover children under age 19 as dependents.
- (5) "Open enrollment" means, with respect to "nondependent child coverage," the period of time during which any individual under age 19 has the opportunity to apply for coverage under a health benefit plan offered by an insurer and shall not be denied eligibility for coverage under the plan due to factors relating to the individual's health status.

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

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

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

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

**"§ 58-12-2. Definitions.**

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

- (1) Adjusted risk-based capital report. – A risk-based capital report that has been adjusted by the Commissioner under G.S. 58-12-6.
- (2) Corrective order. – An order issued by the Commissioner specifying corrective actions that the Commissioner has determined are required.
- (3) Domestic insurer. – Any insurance company or health organization organized in this State under ~~Article 7,~~ Article 7 of this Chapter as specified in subdivisions (4b) and (5a) of this section or under Article 15, 65, or 67 of this Chapter.
- (4) Foreign insurer. – Any insurance company or health organization that is admitted to do business in this State under Article 16 or 67 of this Chapter but is not domiciled in this State.
- (4a) Health organization. – Any insurer which is required by the Commissioner to use the NAIC Health Annual Statement Blank when filing the annual statement prescribed by G.S. 58-2-165 or any health maintenance organization, limited health service organization, dental or vision plan, hospital, medical, or dental indemnity or service corporation, or other organization licensed under Article 65 or 67 of this Chapter. "Health organization" does not include an insurer that is licensed as either a life or health insurer or a property or casualty insurer under this Chapter and that is otherwise subject to either the life or property and casualty risk-based capital requirements.

- (4b) Life or health insurer. – Any insurance company licensed to write the kinds of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property and casualty insurer writing only the kinds of insurance specified in G.S. 58-7-15(3). "Life or health insurer" does not mean any insurer that is required by the Commissioner to use the NAIC Health Annual Statement Blank when it files the annual statement prescribed by G.S. 58-2-165.
- (5) Negative trend. – A negative trend, with respect to a life or health insurer, over a period of time, as determined in accordance with the "trend test calculation" included in the risk-based capital instructions.
- (5a) Property or casualty insurer. – Any insurance company licensed to write the kinds of insurance specified in G.S. 58-7-15(4) through (22); but not monoline mortgage guaranty insurers, financial guaranty insurers, or title ~~insurers; insurers; nor any insurer that is required by the Commissioner to use the NAIC Health Annual Statement Blank when filing the annual statement prescribed by G.S. 58-2-165.~~
- (6) Risk-based capital instructions. – The risk-based capital report including risk-based capital instructions adopted by the NAIC, as those risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- (7) Risk-based capital level. – An insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital where:
  - a. "Company action level risk-based capital" means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital.
  - b. "Regulatory action level risk-based capital" means the product of 1.5 and its authorized control level risk-based capital.
  - c. "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
  - d. "Mandatory control level risk-based capital" means the product of .70 and the authorized control level risk-based capital.
- (8) Risk-based capital plan. – A comprehensive financial plan containing the elements specified in G.S. 58-12-11(b). If the Commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the "revised risk-based capital plan".
- (9) Risk-based capital report. – The report required in G.S. 58-12-6.
- (10) Total adjusted capital. – The sum of:
  - a. An insurer's statutory capital and surplus, as determined in accordance with the statutory accounting applicable to the annual financial statements required under G.S. 58-2-165; and
  - b. Such other items, if any, as the risk-based capital instructions may provide."

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

- "(a) "Company action level event" means any of the following events:
  - (1) The filing of a risk-based capital report by an insurer that indicates that:
    - a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital, ~~if the insurer is a property or casualty insurer or a health organization; capital; or~~
    - b. ~~The~~ In the case of a life or health insurer, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend, if the insurer is a life or health insurer; trend; or
    - c. In the case of a property or casualty insurer or a health organization, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of

its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty or health organization risk-based capital instructions.

- (2) The notification by the Commissioner to the insurer of an adjusted ~~risk-based~~ risk-based capital report that indicates the event in sub-subdivision ~~(1)a. or b.~~ (1)a., (1)b., or (1)c. of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.
- (3) If the insurer challenges an adjusted risk-based capital report that indicates the event in sub-subdivision ~~(1)a. or b.~~ (1)a., (1)b., or (1)c. of this subsection under G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the insurer's challenge."

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

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

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

- (1) "Automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and system-generated final resolution of claims on insurance policies that cover only portable consumer electronic devices, which system shall meet the following criteria:
  - a. Be utilized only by a licensed adjuster, licensed agent, or supervised individuals operating pursuant to this section.
  - b. Comply with all claims payment requirements of this Chapter.
  - c. Be certified as compliant with this section by a licensed adjuster who is an officer of a licensed business entity under this Chapter.
- (2) "Portable consumer electronic devices" include the following, which must be easily carried or conveyed by hand: smartphones, navigation devices, cellular phones, personal digital assistants, iPads, iPhones, Androids, video games, wireless reading devices, laptops, tablets, netbooks, MP3 players, digital cameras, and other electronic devices that are portable in nature, their accessories, and services related to the use of the device.

(b) No adjuster license is required for an individual who, in connection with insurance covering only portable consumer electronic devices as defined in subdivision (a)(2) of this section, collects claim information from or furnishes claim information to insureds, who conducts data entry, including entering data into an automated claims adjudication system, and who does not exercise any discretion in the disposition of the portable consumer electronic device claim; provided that the individual is supervised by a licensed adjuster or licensed agent and there are no more than 25 individuals who may adjust claims under the supervision of the licensed adjuster or licensed agent. No agent acting as a supervisor pursuant to this section is required to be licensed as an adjuster.

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

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

"(e) Examination.

- (1) After completion and filing of the application with the Commissioner, the Commissioner shall require each applicant for license as an agent or an adjuster to take an examination as to the applicant's competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner. This subsection shall not apply to adjusters who adjust only federal crop insurance claims and are certified in accordance with subdivision (2a) of this subsection.
- (2) The Commissioner may require any licensed agent, adjuster, or motor vehicle damage appraiser to take and successfully pass an examination in writing, testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been found guilty of any violation of any provision of this Chapter. If an individual fails to pass

such an examination, the Commissioner shall revoke all licenses issued in his name and no license shall be issued until such individual has passed an examination as provided in this Article.

- (2a) Adjusters who adjust federal crop insurance claims shall be certified as having passed a proficiency examination approved by the federal Risk Management Agency (RMA) as a condition of obtaining an adjuster's license under this Chapter or another proficiency examination approved by the Commissioner. An adjuster who intends to adjust crop insurance claims shall furnish the Commissioner proof that the adjuster is certified as having passed the required examination pursuant to this section.
- (3) Each examination shall be as the Commissioner prescribes and shall be of sufficient scope to test the applicant's knowledge of:
- a. The terms and provisions of the policies or contracts of insurance the applicant proposes to effect; or
  - b. The types of claims or losses the applicant proposes to adjust; and
  - c. The duties and responsibilities of the license; and
  - d. The current laws of this State applicable to the license.
- (4) The answers of the applicant to the examination shall be provided by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as the Commissioner considers necessary reasonably to serve the convenience of both the Commissioner and applicants: Provided that the Commissioner may contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner may charge a reasonable fee in addition to the registration fee charged under G.S. 58-33-125, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.
- (5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-33-125 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he considers necessary for the applicants' proper preparation for examinations. The Commissioner may contract directly with publishers and other suppliers for the production of the preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

- (6) In addition to the examinations for the kinds of insurance specified in G.S. 58-33-25(c)(1) and (2), before any resident may sell Medicare supplement or long-term care insurance policies defined respectively in Articles 54 and 55 of this Chapter, the resident must take and pass a supplemental written examination according to requirements prescribed by the Commissioner.
- (7) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination."

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

"North Carolina Self-Insurance Security Association.

**"§ 97-130. Definitions.**

As used in this Article:

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

**"§ 97-131. Creation.**

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

- (1) An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of another member's insolvency, as defined in G.S. 97-135, when:
  - a. The individual self-insurer or group self-insurer is a member of the Association when an insolvency occurs, or
  - b. The individual self-insurer or group self-insurer has been a member of the Association at some point in time during the 12-month period immediately preceding the insolvency in question.

- (2) An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs.
- (3) In determining the membership of the Association for the purposes of subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no individual self-insurer or group self-insurer may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer is on that date licensed as an individual self-insurer by the Commissioner under Article 5 of this Chapter or a group of employers is at that time licensed as a group self-insurer by the Commissioner under Article 47 of Chapter 58 of the General Statutes.

**"§ 97-132. Board of directors.**

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

**"§ 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 operate and 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 noncash elements of the composite security may be one year or multiple year instruments.~~

- ~~b. Within 90 days following the submission of the initial plan under sub-subdivision a. of this subdivision, the Commissioner shall either approve or disapprove the initial plan and shall notify the Association in writing. If the Commissioner does not approve or disapprove the initial plan within 90 days following submission, then the initial plan shall be deemed to be approved by the Commissioner. All subsequent plans shall be either approved or disapproved within 60 days following submission.~~
- ~~e. The Commissioner shall also determine the total undiscounted claims liability of each individual self-insurer that will participate in the Association Aggregate Security System as well as the aggregate total undiscounted outstanding claims liabilities of all the individual self-insurers that are to participate in the Association Aggregate Security System and shall notify the Association of this determination.~~
- ~~d. Upon approval by the Commissioner of the Association's plan for the Association Aggregate Security System, the Association shall assess the individual self-insurers that participate in the Association Aggregate Security System pursuant to subdivision (3a) of this subsection.~~
- ~~e. If the Commissioner disapproves the plan for any year, If the Association determines it is not feasible or practical to operate the Association Aggregate Security System in any given year, it may terminate or suspend the Association Aggregate Security System and shall notify the Commissioner at least 90 days prior to the termination or suspension of the Association Aggregate Security System for that particular year. During any period that the Associate Aggregate Security System is terminated or suspended, every self-insurer shall deposit with the Commissioner, or continue to deposit, the amount required by G.S. 97-185(b3) in the manner prescribed by G.S. 97-185(c).~~
- ~~f. Group self-insurers shall not participate in the Association Aggregate Security System.~~

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

(3a) Assess members of the Association as follows:

- a. Association Aggregate Security System assessments. – The Association shall assess each individual self-insurer participating in the Association Aggregate Security System a security system assessment. The amount of the security system assessment charged to each individual self-insurer participating in the Association Aggregate Security System shall be based on the Association's reasonable consideration of all of the following factors:
  1. The total amount of assessments necessary to provide aggregate security for all participating individual self-insurers.
  2. The individual self-insurer's total workers' compensation liabilities under the Act.

3. The financial strength and creditworthiness of the participating individual self-insurer.
  4. Any other relevant factors.
- b. Special assessment. – In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association may collect a special assessment from the members in an amount sufficient to pay the aggregate value of such covered claims. Each member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.
  - c. Initial assessments. – An individual self-insurer that becomes a member and does not initially participate in the Association Aggregate Security System shall pay an initial assessment to the Association in an amount determined by the Board. A group self-insurer, upon receiving its initial license from the Commissioner, shall pay an initial assessment to the Association in an amount determined by the Board.
  - d. Each member shall be notified of assessments no later than 30 days before the assessment is due.
  - e. Delinquent assessments, except as otherwise provided, shall bear interest at a rate to be established by the Board.
  - f. Group assessments. – The Association may annually assess each member group self-insurer in an amount not to exceed two percent (2%) of the group self-insurer's annual gross premiums for the preceding calendar year, as determined under G.S. 105-228.5(b), (b1), and (c).
- (4) Be obligated to pay covered claims.
  - (5) After paying any covered claim, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer or any third party by any appropriate action brought in its own name or in the name of the injured employee and dependents.
  - (6) Expend Fund assets in amounts necessary to pay all of the following:
    - a. The obligations of the Association under this Article subsequent to an insolvency.
    - b. The expenses of handling covered claims subsequent to an insolvency.
    - c. The cost of examinations under G.S. 97-137.
    - d. The costs of implementing and operating the Association Aggregate Security System.
    - e. All other expenses authorized by this Article.
  - (7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent member was a party to determine the extent to which such settlements may be properly contested.
  - (8) Notify such persons as the Commissioner directs under G.S. 97-136.
  - (9) Handle claims through its directors, its employees, or through one or more members or other persons designated as servicing facilities. ~~Designation of a servicing facility is subject to the approval of the Commissioner, but designation~~ of a member as a servicing facility may be declined by such member.
  - (10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association.
  - (11) Pay any other expenses of the Association authorized by this section.
  - (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

(13) Require each member to annually determine its total undiscounted workers' compensation claims liability and require each member to notify the Association of this determination.

(b) The Association may:

- (1) Employ or retain such persons, including, but not limited to, adjustors, brokers, accountants, attorneys, financial advisors, investment bankers, placement agents, and consultants, as the Board may determine are necessary to handle claims, perform other duties of, provide services to, and consult with the Association.
- (2) Borrow funds necessary to effect the purposes of this Article in accord with the Plan, including entering into standby lines of credit.
- (3) Sue or be sued.
- (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this section.
- (5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.
- (6) ~~Reimburse the Department of Insurance up to twenty thousand dollars (\$20,000) for consultants retained by the Department to review the initial plan submitted pursuant to G.S. 97-133(a)(2a).~~

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

(c1) The Association shall provide in its Plan that the functions of administration and adjusting claims shall not be performed by the same entity that provides legal representation to the Association for claims.

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

**"§ 97-134. Plan of Operation.**

The Plan is as follows:

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

...

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

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

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

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

...."

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

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

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

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

**SECTION 12.** Article 8 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-8-36. Administrative fees.**

Statewide multiline limited assessable mutual insurance companies are not subject to the provisions of G.S. 58-33-85(b)."

**SECTION 13.** G.S. 58-64-85 reads as rewritten:

**"§ 58-64-85. Other licensing or regulation.**

(a) Nothing in this Article affects the authority of the Department of Health and Human Services or any successor agency otherwise provided by law to license or regulate any health service facility or domiciliary service facility.

(b) Facilities and providers licensed under this Article that also are subject to the provisions of the North Carolina Condominium Act under Chapter 47C of the General Statutes shall not be subject to the provisions of Chapter 39A of the General Statutes, provided that the facility's declaration of condominium does not require the payment of any fee or charge not otherwise provided for in a resident's contract for continuing care, or other separate contract for the provisions of membership or services."

**SECTION 14.** Sections 1, 4, 10, and 11 of this act become effective July 1, 2011. Sections 3, 5, 6, and 7 of this act become effective October 1, 2011. Section 8 of this act becomes effective July 1, 2012, and applies to licenses issued on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14<sup>th</sup> day of June, 2011.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 11:36 a.m. this 23<sup>rd</sup> day of June, 2011