

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 298  
Committee Substitute Favorable 4/27/11  
PROPOSED COMMITTEE SUBSTITUTE H298-PCS50347-SVf-18

Short Title: Insurance Amendments.-AB

(Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

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



1 awarded by the Commissioner under this subsection a standard clause which provides that the  
2 State Auditor and internal auditors of the Commissioner may audit the records of the contractor  
3 during the term of the agreement or contract to verify accounts and data affecting fees and  
4 performance. The Commissioner shall not award a cost plus percentage of cost agreement or  
5 contract for any purpose."

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

8 **"§ 58-2-31. Seniors' Health Insurance Information Program.**

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

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

14 **"§ 58-3-150. Forms to be approved by Commissioner.**

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

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

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

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

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

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

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

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

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

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

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

11 **"§ 58-50-131. Premium rates for health benefit plans; approval authority; hearing.**

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

21           (b) The Commissioner shall approve or disapprove a schedule of premium rates within  
22 60 days of receipt of a complete filing. It shall be unlawful to use a schedule of premium rates  
23 until approved. If the Commissioner disapproves the filing, the Commissioner shall notify the  
24 filer, shall specify the reasons for disapproval, and shall provide an opportunity for refiling.

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

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

35 **"§ 58-3-285. Nondependent child coverage defined; open enrollment.**

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

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

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

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

40           (4) "Nondependent child coverage" or "nondependent child policy" means an  
41 individual health benefit plan which provides coverage to an individual  
42 under age 19. This shall not include health benefit plans that cover children  
43 under age 19 as dependents.

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

49           (b) An insurer who offers nondependent child coverage shall offer open enrollment  
50 either continuously throughout the year or for the months of January and July of each year.  
51 Coverage issued under this section shall be issued without any riders based on the health status

1 of the child. Nothing in this section shall require an insurer to offer nondependent child  
2 coverage or maternity coverage within an offer of nondependent child coverage.

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

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

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

10 **"§ 58-12-2. Definitions.**

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

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

- 1 (7) Risk-based capital level. – An insurer's company action level risk-based  
 2 capital, regulatory action level risk-based capital, authorized control level  
 3 risk-based capital, or mandatory control level risk-based capital where:  
 4 a. "Company action level risk-based capital" means, with respect to any  
 5 insurer, the product of 2.0 and its authorized control level risk-based  
 6 capital.  
 7 b. "Regulatory action level risk-based capital" means the product of 1.5  
 8 and its authorized control level risk-based capital.  
 9 c. "Authorized control level risk-based capital" means the number  
 10 determined under the risk-based capital formula in accordance with  
 11 the risk-based capital instructions.  
 12 d. "Mandatory control level risk-based capital" means the product of  
 13 .70 and the authorized control level risk-based capital.
- 14 (8) Risk-based capital plan. – A comprehensive financial plan containing the  
 15 elements specified in G.S. 58-12-11(b). If the Commissioner rejects the  
 16 risk-based capital plan, and it is revised by the insurer, with or without the  
 17 Commissioner's recommendation, the plan shall be called the "revised  
 18 risk-based capital plan".
- 19 (9) Risk-based capital report. – The report required in G.S. 58-12-6.
- 20 (10) Total adjusted capital. – The sum of:  
 21 a. An insurer's statutory capital and surplus, as determined in  
 22 accordance with the statutory accounting applicable to the annual  
 23 financial statements required under G.S. 58-2-165; and  
 24 b. Such other items, if any, as the risk-based capital instructions may  
 25 provide."

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

- 27 "(a) "Company action level event" means any of the following events:  
 28 (1) The filing of a risk-based capital report by an insurer that indicates that:  
 29 a. The insurer's total adjusted capital is greater than or equal to its  
 30 regulatory action level risk-based capital but less than its company  
 31 action level risk-based capital, ~~if the insurer is a property or casualty~~  
 32 ~~insurer or a health organization; capital; or~~  
 33 b. ~~The~~ In the case of a life or health insurer, the insurer has total  
 34 adjusted capital that is greater than or equal to its company action  
 35 level risk-based capital but less than the product of its authorized  
 36 control level risk-based capital and 2.5 and has a negative trend, if  
 37 the insurer is a life or health insurer; trend; or  
 38 In the case of a property or casualty insurer or a health organization,  
 39 the insurer has total adjusted capital that is greater than or equal to its  
 40 company action level risk-based capital but less than the product of  
 41 its authorized control level risk-based capital and 3.0 and triggers the  
 42 trend test determined in accordance with the trend test calculation  
 43 included in the property and casualty or health organization  
 44 risk-based capital instructions.  
 45 (2) The notification by the Commissioner to the insurer of an adjusted ~~risk-based~~  
 46 risk-based capital report that indicates the event in sub-subdivision ~~(1)a. or~~  
 47 ~~b. (1)a., (1)b., or (1)c.~~ of this subsection if the insurer does not challenge the  
 48 adjusted risk-based capital report under G.S. 58-12-30.  
 49 (3) If the insurer challenges an adjusted risk-based capital report that indicates  
 50 the event in sub-subdivision ~~(1)a. or b. (1)a., (1)b., or (1)c.~~ of this subsection

1 under G.S. 58-12-30, the notification by the Commissioner to the insurer that  
2 the Commissioner has rejected the insurer's challenge."

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

5 **"§ 58-33-27. Claims handling for portable consumer electronic devices.**

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

7 (1) "Automated claims adjudication system" means a preprogrammed computer  
8 system designed for the collection, data entry, calculation, and  
9 system-generated final resolution of claims on insurance policies that cover  
10 only portable consumer electronic devices, which system shall meet the  
11 following criteria:

12 a. Be utilized only by a licensed adjuster, licensed agent, or supervised  
13 individuals operating pursuant to this section.

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

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

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

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

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

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

37 "(e) Examination.

38 (1) After completion and filing of the application with the Commissioner, the  
39 Commissioner shall require each applicant for license as an agent or an  
40 adjuster to take an examination as to the applicant's competence to be  
41 licensed. The applicant must take and pass the examination according to  
42 requirements prescribed by the Commissioner. This subsection shall not  
43 apply to adjusters who adjust only federal crop insurance claims and are  
44 certified in accordance with subdivision (2a) of this subsection.

45 (2) The Commissioner may require any licensed agent, adjuster, or motor  
46 vehicle damage appraiser to take and successfully pass an examination in  
47 writing, testing his competence and qualifications as a condition to the  
48 continuance or renewal of his license, if the licensee has been found guilty of  
49 any violation of any provision of this Chapter. If an individual fails to pass  
50 such an examination, the Commissioner shall revoke all licenses issued in

- 1 his name and no license shall be issued until such individual has passed an  
2 examination as provided in this Article.
- 3 (2a) Adjusters who adjust federal crop insurance claims shall be certified as  
4 having passed a proficiency examination approved by the federal Risk  
5 Management Agency (RMA) as a condition of obtaining an adjuster's license  
6 under this Chapter or another proficiency examination approved by the  
7 Commissioner. An adjuster who intends to adjust crop insurance claims shall  
8 furnish the Commissioner proof that the adjuster is certified as having  
9 passed the required examination pursuant to this section.
- 10 (3) Each examination shall be as the Commissioner prescribes and shall be of  
11 sufficient scope to test the applicant's knowledge of:  
12 a. The terms and provisions of the policies or contracts of insurance the  
13 applicant proposes to effect; or  
14 b. The types of claims or losses the applicant proposes to adjust; and  
15 c. The duties and responsibilities of the license; and  
16 d. The current laws of this State applicable to the license.
- 17 (4) The answers of the applicant to the examination shall be provided by the  
18 applicant under the Commissioner's supervision. The Commissioner shall  
19 give examinations at such times and places within this State as the  
20 Commissioner considers necessary reasonably to serve the convenience of  
21 both the Commissioner and applicants: Provided that the Commissioner may  
22 contract directly with persons for the processing of examination application  
23 forms and for the administration and grading of the examinations required  
24 by this section; the Commissioner may charge a reasonable fee in addition to  
25 the registration fee charged under G.S. 58-33-125, to offset the cost of the  
26 examination contract authorized by this subsection; and such contracts shall  
27 not be subject to Article 3 of Chapter 143 of the General Statutes. However,  
28 the Commissioner shall: (i) submit all proposed statewide and agency term  
29 agreements or contracts for supplies, materials, printing, equipment, and  
30 contractual services that exceed one million dollars (\$1,000,000) authorized  
31 by this subdivision to the Attorney General or the Attorney General's  
32 designee for review as provided in G.S. 114-8.3; and (ii) include in all  
33 contracts to be awarded by the Commissioner under this subdivision a  
34 standard clause which provides that the State Auditor and internal auditors  
35 of the Commissioner may audit the records of the contractor during the term  
36 of the contract to verify accounts and data affecting fees and performance.  
37 The Commissioner shall not award a cost plus percentage of cost contract for  
38 any purpose.
- 39 (5) The Commissioner shall collect in advance the examination and registration  
40 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The  
41 Commissioner shall make or cause to be made available to all applicants, for  
42 a reasonable fee to offset the costs of production, materials that he considers  
43 necessary for the applicants' proper preparation for examinations. The  
44 Commissioner may contract directly with publishers and other suppliers for  
45 the production of the preparatory materials, and contracts so let by the  
46 Commissioner shall not be subject to Article 3 of Chapter 143 of the General  
47 Statutes. However, the Commissioner shall: (i) submit all proposed  
48 statewide and agency term contracts for supplies, materials, printing,  
49 equipment, and contractual services that exceed one million dollars  
50 (\$1,000,000) authorized by this subdivision to the Attorney General or the  
51 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)

1 include in all contracts to be awarded by the Commissioner under this  
 2 subdivision a standard clause which provides that the State Auditor and  
 3 internal auditors of the Commissioner may audit the records of the  
 4 contractor during the term of the contract to verify accounts and data  
 5 affecting fees and performance. The Commissioner shall not award a cost  
 6 plus percentage of cost contract for any purpose.

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

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

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

17 "Article 4.

18 "North Carolina Self-Insurance Security Association.

19 **"§ 97-130. Definitions.**

20 As used in this Article:

21 (1) "Association" means the North Carolina Self-Insurance Security Association  
 22 established by G.S. 97-131.

23 (1a) "Association Aggregate Security System" means the security system  
 24 established by the Association under G.S. 97-133 whereby individual  
 25 self-insurers collectively secure their aggregate self-insured workers'  
 26 compensation liabilities through the North Carolina Self-Insurance Security  
 27 Association.

28 (2) "Board" means the Board of Directors of the Association established by  
 29 G.S. 97-132.

30 (3) "Commissioner" means the North Carolina Commissioner of Insurance.

31 (4) "Covered claim" means an unpaid claim against an insolvent individual  
 32 self-insurer or group self-insurer that relates to an injury that occurs while  
 33 the individual self-insurer or group self-insurer is a member of the  
 34 Association and that is compensable under this Chapter.

35 (5) "Fund" means the North Carolina Self-Insurance Security Fund established  
 36 by G.S. 97-133.

37 (5a) "Group" or "Group self-insurer" means a group self-insurer licensed by the  
 38 Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.

39 (5b) "Individual self-insurer" means an individual employer licensed by the  
 40 Commissioner under Article 5 of this Chapter.

41 (6) "Member self-insurer" or "member" means an individual self-insurer or  
 42 group self-insurer that is required to be a member of the Association under  
 43 this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.

44 (7) "Plan" means the Plan of Operation authorized by G.S. 97-134.

45 (8) Repealed by Session Laws 2005-400, s. 1.2, effective January 1, 2006.

46 (9) "Servicing facility" means those persons delegated by the Board ~~and~~  
 47 ~~approved by the Commissioner~~ to settle or compromise claims and to  
 48 expend Fund assets to pay claims.

49 **"§ 97-131. Creation.**

50 ...



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

- 6 (1) An individual self-insurer or a group self-insurer shall be deemed to be a  
7 member of the Association for purposes of another member's insolvency, as  
8 defined in G.S. 97-135, when:  
9 a. The individual self-insurer or group self-insurer is a member of the  
10 Association when an insolvency occurs, or  
11 b. The individual self-insurer or group self-insurer has been a member  
12 of the Association at some point in time during the 12-month period  
13 immediately preceding the insolvency in question.
- 14 (2) An individual self-insurer or a group self-insurer shall be deemed to be a  
15 member of the Association for purposes of its own insolvency if it is a  
16 member when the compensable injury occurs.
- 17 (3) In determining the membership of the Association for the purposes of  
18 subdivisions (1) and (2) of this subsection for any date after the effective  
19 date of this Article, no individual self-insurer or group self-insurer may be  
20 deemed to be a member of the Association on any date after the effective  
21 date of this Article, unless that employer is on that date licensed as an  
22 individual self-insurer by the Commissioner under Article 5 of this Chapter  
23 or a group of employers is at that time licensed as a group self-insurer by the  
24 Commissioner under Article 47 of Chapter 58 of the General Statutes.

25 **"§ 97-132. Board of directors.**

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

33 **"§ 97-133. Powers and duties of the Association.**

34 (a) The Association shall:

- 35 (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.
- 36 (1a) Administer a fund, to be known as the North Carolina Self-Insurance  
37 Security Fund, which shall receive the assets of the North Carolina  
38 Self-Insurance Guaranty Fund previously established under subdivision (2)  
39 of this subsection, the assessments required by subdivisions (2a) and (3a)  
40 of this subsection and any other sums received by the Association. ~~In its~~  
41 ~~discretion, the Board may determine that the assets of the Fund should be~~  
42 ~~segregated or that a separate accounting shall be made in order to identify~~  
43 ~~that portion of the Fund which represents assessments paid by individual~~  
44 ~~self-insurers and that portion of the Fund which represents assessments paid~~  
45 ~~by group self-insurers. If the Board segregates the Fund in this manner, the~~  
46 ~~Association shall thereafter pay covered claims against individual member~~  
47 ~~self-insurers from that portion of the Fund that represents assessments~~  
48 ~~against individual self-insurers and shall thereafter pay covered claims~~  
49 ~~against group member self-insurers from that portion of the Fund that~~  
50 ~~represents assessments against group self-insurers.~~ The costs of  
51 administering the Association shall be borne by the Fund. The Association is

1 authorized to secure insurance, primary excess insurance, reinsurance,  
2 bonds, other insurance, financial guarantees and related financial instruments  
3 to effectuate the purposes of the Association. The Board will invest the Fund  
4 assets pursuant to an investment policy adopted by the Board and reviewed  
5 and approved annually by the Department of the State Treasurer. The  
6 earnings from investment of Fund assets shall be placed in or credited to the  
7 Fund.

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

9 (2a) ~~Establish, operate, and maintain~~ Establish and operate the Association  
10 Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as  
11 follows:

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

34 b. ~~Within 90 days following the submission of the initial plan under~~  
35 ~~sub-subdivision a. of this subdivision, the Commissioner shall either~~  
36 ~~approve or disapprove the initial plan and shall notify the Association~~  
37 ~~in writing. If the Commissioner does not approve or disapprove the~~  
38 ~~initial plan within 90 days following submission, then the initial plan~~  
39 ~~shall be deemed to be approved by the Commissioner. All~~  
40 ~~subsequent plans shall be either approved or disapproved within 60~~  
41 ~~days following submission.~~

42 e. ~~The Commissioner shall also determine the total undiscounted claims~~  
43 ~~liability of each individual self insurer that will participate in the~~  
44 ~~Association Aggregate Security System as well as the aggregate total~~  
45 ~~undiscounted outstanding claims liabilities of all the individual~~  
46 ~~self insurers that are to participate in the Association Aggregate~~  
47 ~~Security System and shall notify the Association of this~~  
48 ~~determination.~~

49 d. ~~Upon approval by the Commissioner of the Association's plan for the~~  
50 ~~Association Aggregate Security System, the~~ The Association shall  
51 ~~assess the individual self-insurers that participate in the Association~~

- 1 Aggregate Security System pursuant to subdivision (3a) of this  
2 subsection.
- 3 e. ~~If the Commissioner disapproves the plan for any year, If the~~  
4 ~~Association determines it is not feasible or practical to operate the~~  
5 ~~Association Aggregate Security System in any given year, it may~~  
6 ~~terminate or suspend the Association Aggregate Security System and~~  
7 ~~shall notify the Commissioner at least 90 days prior to the~~  
8 ~~termination or suspension of the Association Aggregate Security~~  
9 ~~System for that particular year. During any period that the Associate~~  
10 ~~Aggregate Security System is terminated or suspended, every~~  
11 self-insurer shall deposit with the Commissioner, or continue to  
12 deposit, the amount required by G.S. 97-185(b3) in the manner  
13 prescribed by G.S. 97-185(c).
- 14 f. Group self-insurers shall not participate in the Association Aggregate  
15 Security System.
- 16 (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 17 (3a) Assess members of the Association as follows:
- 18 a. Association Aggregate Security System assessments. – The  
19 Association shall assess each individual self-insurer participating in  
20 the Association Aggregate Security System a security system  
21 assessment. The amount of the security system assessment charged to  
22 each individual self-insurer participating in the Association  
23 Aggregate Security System shall be based on the Association's  
24 reasonable consideration of all of the following factors:
- 25 1. The total amount of assessments necessary to provide  
26 aggregate security for all participating individual  
27 self-insurers.
- 28 2. The individual self-insurer's total workers' compensation  
29 liabilities under the Act.
- 30 3. The financial strength and creditworthiness of the  
31 participating individual self-insurer.
- 32 4. Any other relevant factors.
- 33 b. Special assessment. – In the event that there are covered claims  
34 against an insolvent member or members and the assets of the Fund  
35 are not sufficient to pay the obligations of the Association, then the  
36 Association may collect a special assessment from the members in an  
37 amount sufficient to pay the aggregate value of such covered claims.  
38 Each member's special assessment shall be determined by the Board  
39 and shall be based on the proportion of the member's total obligations  
40 under the Act to the aggregate total of all members' obligations under  
41 the Act.
- 42 c. Initial assessments. – An individual self-insurer that becomes a  
43 member and does not initially participate in the Association  
44 Aggregate Security System shall pay an initial assessment to the  
45 Association in an amount determined by the Board. A group  
46 self-insurer, upon receiving its initial license from the Commissioner,  
47 shall pay an initial assessment to the Association in an amount  
48 determined by the Board.
- 49 d. Each member shall be notified of assessments no later than 30 days  
50 before the assessment is due.

- 1 e. Delinquent assessments, except as otherwise provided, shall bear  
2 interest at a rate to be established by the Board.
- 3 f. Group assessments. – The Association may annually assess each  
4 member group self-insurer in an amount not to exceed two percent  
5 (2%) of the group self-insurer's annual gross premiums for the  
6 preceding calendar year, as determined under G.S. 105-228.5(b),  
7 (b1), and (c).
- 8 (4) Be obligated to pay covered claims.
- 9 (5) After paying any covered claim, be subrogated to the rights of the injured  
10 employee and dependents and be entitled to enforce liability against the  
11 self-insurer or any third party by any appropriate action brought in its own  
12 name or in the name of the injured employee and dependents.
- 13 (6) Expend Fund assets in amounts necessary to pay all of the following:
- 14 a. The obligations of the Association under this Article subsequent to  
15 an insolvency.
- 16 b. The expenses of handling covered claims subsequent to an  
17 insolvency.
- 18 c. The cost of examinations under G.S. 97-137.
- 19 d. The costs of implementing and operating the Association Aggregate  
20 Security System.
- 21 e. All other expenses authorized by this Article.
- 22 (7) Investigate claims brought against the Association and adjust, compromise,  
23 settle, and pay covered claims to the extent of the Association's obligation;  
24 and deny all other claims. The Association may review settlements to which  
25 the insolvent member was a party to determine the extent to which such  
26 settlements may be properly contested.
- 27 (8) Notify such persons as the Commissioner directs under G.S. 97-136.
- 28 (9) Handle claims through its directors, its employees, or through one or more  
29 members or other persons designated as servicing facilities. Designation of a  
30 ~~servicing facility is subject to the approval of the Commissioner, but~~  
31 ~~designation~~ of a member as a servicing facility may be declined by such  
32 member.
- 33 (10) Reimburse each servicing facility for obligations of the Association paid by  
34 the facility and for expenses incurred by the facility while handling claims  
35 on behalf of the Association.
- 36 (11) Pay any other expenses of the Association authorized by this section.
- 37 (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 38 (13) Require each member to annually determine its total undiscounted workers'  
39 compensation claims liability and require each member to notify the  
40 Association of this determination.
- 41 (b) The Association may:
- 42 (1) Employ or retain such persons, including, but not limited to, adjustors,  
43 brokers, accountants, attorneys, financial advisors, investment bankers,  
44 placement agents, and consultants, as the Board may determine are  
45 necessary to handle claims, perform other duties of, provide services to, and  
46 consult with the Association.
- 47 (2) Borrow funds necessary to effect the purposes of this Article in accord with  
48 the Plan, including entering into standby lines of credit.
- 49 (3) Sue or be sued.
- 50 (4) Negotiate and become a party to such contracts as are necessary to carry out  
51 the purpose of this section.

- 1 (5) Perform such other acts as are necessary or proper to effectuate the purpose  
2 of this section.
- 3 ~~(6) Reimburse the Department of Insurance up to twenty thousand dollars~~  
4 ~~(\$20,000) for consultants retained by the Department to review the initial~~  
5 ~~plan submitted pursuant to G.S. 97-133(a)(2a).~~
- 6 (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 7 (c1) The Association shall provide in its Plan that the functions of administration and  
8 adjusting claims shall not be performed by the same entity that provides legal representation to  
9 the Association for claims.
- 10 (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

11 **"§ 97-134. Plan of Operation.**

12 The Plan is as follows:

- 13 (1) ~~The Association Board shall submit to the Commissioner adopt a Plan of~~  
14 ~~Operation and any amendments necessary or suitable to assure the fair,~~  
15 ~~reasonable, and equitable administration of the Association. The Plan and~~  
16 ~~any amendments become effective upon approval in writing by the~~  
17 ~~Commissioner. If the Association at any time fails to submit a suitable Plan~~  
18 ~~or suitable amendment to the Plan the Commissioner shall, after notice and~~  
19 ~~hearing, adopt such reasonable rules as are necessary or advisable to~~  
20 ~~effectuate this Article. The rules shall continue in force until modified by the~~  
21 ~~Commissioner or superseded by a Plan submitted by the Association and~~  
22 ~~approved by the Commissioner.~~
- 23 (2) All member self-insurers shall comply with the Plan.
- 24 (3) The Plan shall:
- 25 a. Establish the procedures whereby all the powers and duties of the  
26 Association under G.S. 97-133 will be performed.
- 27 b. Establish procedures for investing and managing Fund assets.
- 28 c. Adopt a reasonable mechanism and procedure to achieve equity in  
29 assessing members under G.S. 97-133.
- 30 d. Establish the amount and method of reimbursing members of the  
31 Board under G.S. 97-132.
- 32 e. Establish procedures by which claims may be filed with the  
33 Association and establish acceptable forms of proof of covered  
34 claims.
- 35 f. Establish regular places and times for meetings of the Board.
- 36 g. Establish procedures for records to be kept of all financial  
37 transactions of the Association, its agents, and the Board.
- 38 h. Provide that any member self-insurer aggrieved by any final action or  
39 decision of the Association may appeal to the Commissioner within  
40 30 days after the action or decision.
- 41 ~~i. Establish the procedures whereby selections for the Board shall be~~  
42 ~~submitted to the Commissioner.~~
- 43 j. Contain additional provisions necessary or proper for the execution  
44 of the powers and duties of the Association.
- 45 ...

46 **"§ 97-136. Powers and duties of the Commissioner.**

47 (a) The Commissioner shall:

- 48 (1) Notify the Association of the existence of an insolvent member self-insurer  
49 not later than 30 days after he receives notice of an insolvency pursuant to  
50 the standards set forth in G.S. 97-135.

- 1           (2) ~~Approve or disapprove the plan for an Association Aggregate Security~~  
2           ~~System as required under G.S. 97-133(a)(2a)b. and notify the Association of~~  
3           ~~the information required under G.S. 97-133(a)(2a)c.~~

4           ...  
5   **"§ 97-137. Examination of the Association.**

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

9   ...."

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

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

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

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

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

35   **"§ 58-8-36. Administrative fees.**

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

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

39   **"§ 58-64-85. Other licensing or regulation.**

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

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

49           **SECTION 14.** Sections 1, 4, 10, and 11 of this act become effective July 1, 2011.  
50   Sections 3, 5, 6, and 7 of this act become effective October 1, 2011. Section 8 of this act

1 becomes effective July 1, 2012, and applies to licenses issued on or after that date. The  
2 remainder of this act is effective when it becomes law.