

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 127
Feb 15, 2023
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10063-NE-78

Short Title: DOI Omnibus Bill.-AB

(Public)

Sponsors: Representative Setzer.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE INSURANCE LAWS OF NORTH
3 CAROLINA, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE.
4 The General Assembly of North Carolina enacts:

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

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

8 **"§ 58-21-10. Definitions.**

9 As used in this Article:

- 10 (1) ~~"Admitted insurer" means an Admitted insurer.~~ – An insurer licensed to
11 engage in the business of insurance in this State.
12 (1a) ~~"Affiliate" means, with Affiliate.~~ – With respect to an insured, includes any
13 entity that controls, is controlled by, or is under common control with the
14 insured.
15 (1b) ~~"Affiliated group" means any Affiliated group.~~ – Any group of entities that
16 are all affiliated.
17 (2) ~~"Capital", as Capital.~~ – As used in the financial requirements of
18 G.S. 58-21-20, ~~means~~ includes funds paid in for stock or other evidence of
19 ownership.
20 (2a) ~~"Control" means an Control.~~ – An entity ~~that has 'control'~~ control over another
21 entity if either of the following occurs:
22 a. The entity directly or indirectly or acting through one or more other
23 persons owns, controls, or has the power to vote twenty-five percent
24 (25%) or more of any class of voting securities of the other entity.
25 b. The entity controls in any manner the election of a majority of the
26 directors or trustees of the other entity.
27 (3) ~~"Eligible surplus lines insurer" means an Eligible surplus lines insurer.~~ – An
28 alien insurer as defined in G.S. 58-21-17, a nonadmitted domestic surplus
29 lines insurer, or a nonadmitted insurer with which a surplus lines licensee may
30 place surplus lines insurance under G.S. 58-21-20.
31 (4) ~~"Export" means to Export.~~ – To place surplus lines insurance with a
32 nonadmitted domestic surplus lines insurer or a nonadmitted insurer.
33 (4a) ~~"Nonadmitted domestic surplus lines insurer" means an Nonadmitted~~
34 domestic surplus lines insurer. – An insurer that is domiciled in and authorized
35 pursuant to G.S. 58-21-21 to transact surplus lines insurance in this State.



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

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

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

(a) The North Carolina Surplus Lines Association (NCSLA) shall serve as the regulatory support organization of surplus lines licensees and shall carry out the following functions:

- 46 ...
- 47 (5) Provide other services to its members that are incidental or related to the
 48 purposes of the association.
 49"

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

"§ 58-21-85. Surplus lines tax.

1 ...
2 (b) ~~At the same time that he files his quarterly report as set forth in G.S. 58-21-80, each~~
3 ~~surplus lines licensee shall pay the premium receipts tax due for the period covered by the~~
4 ~~report.~~ Payment of the premium receipts tax shall be due:

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

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

10"

11
12 **PART II. ADJUSTMENT TO AGE REQUIREMENT FOR MANDATORY**
13 **COLORECTAL CANCER SCREENING COVERAGE**

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

15 **"§ 58-3-179. Coverage for colorectal cancer screening.**

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

- 21 (1) At least ~~50~~45 years of age, or
- 22 (2) Less than ~~50~~45 years of age and at high risk for colorectal cancer according
23 to the most recently published colorectal cancer screening guidelines of the
24 American Cancer Society or guidelines adopted by the North Carolina
25 Advisory Committee on Cancer Coordination and Control.

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

29"

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

32
33 **PART III. TECHNICAL CORRECTION TO REFLECT COMPENDIUM NAME**
34 **CHANGE**

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

36 **"§ 58-51-59. Coverage of certain prescribed drugs for cancer treatment.**

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

- 46 ...
- 47 (2) ~~The ThomsonMicromedex DrugDex;~~ Micromedex DrugDex System;

48"

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

50 **"§ 58-65-94. Coverage of certain prescribed drugs for cancer treatment.**

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

- ...
(2) The ThomsonMicromedex DrugDex;Micromedex DrugDex System;
...."

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

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

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

- ...
(2) The ThomsonMicromedex DrugDex;Micromedex DrugDex System;
...."

PART IV. CHANGES RELATED TO THE INSURANCE GUARANTY ACT

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

"§ 58-48-20. Definitions.

As used in this Article:

- (1) "Account" means any Account. - Any one of the three accounts created by G.S. 58-48-25.
(1a) "Affiliate" means a Affiliate. - A person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.
(2) "Association" means the Association. - The North Carolina Insurance Guaranty Association created under G.S. 58-48-25.
(2a) "Claimant" means any Claimant. - Any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.
(3) Repealed by Session Laws 1991, c. 720, s. 6.
(3a) "Control" means the Control. - The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly owns, controls, holds with the power to vote, or holds proxies

- 1 representing ten percent (10%) or more of the voting securities of any other
2 person. This presumption may be rebutted by a showing that control does not
3 exist in fact.
- 4 (4) ~~"Covered claim" means an~~ Covered claim. – An unpaid claim, including one
5 of unearned premiums, which is in excess of fifty dollars (\$50.00) and arises
6 out of and is within the coverage and not in excess of the applicable limits of
7 an insurance policy to which this Article applies as issued by an insurer, if
8 ~~such that~~ insurer becomes an insolvent insurer after the effective date of this
9 Article and (i) the claimant or insured is a resident of this State at the time of
10 the insured event; or (ii) the property from which the claim arises is
11 permanently located in this State. "Covered claim" shall not include any
12 amount awarded (i) as punitive or exemplary damages; (ii) sought as a return
13 of premium under any retrospective rating plan; or (iii) due any reinsurer,
14 insurer, insurance pool, or underwriting association, as subrogation or
15 contribution recoveries or otherwise. "Covered claim" also shall not include
16 fines or penalties, including ~~attorneys~~ attorneys' fees, imposed against an
17 insolvent insurer or its insured or claims of any claimant whose net worth
18 exceeds fifty million dollars (\$50,000,000) on December 31 of the year
19 preceding the date the insurer becomes insolvent.
- 20 (5) ~~"Insolvent insurer" means~~ Insolvent insurer. – An insurer: (i) ~~an insurer~~
21 licensed and authorized to transact insurance in this State either at the time the
22 policy was issued or when the insured event occurred and (ii) against whom
23 an order of liquidation with a finding of insolvency has been entered after the
24 effective date of this Article by a court of competent jurisdiction in the
25 insurer's state of domicile or of this State under the provisions of Article 30 of
26 this Chapter, and which order of liquidation has not been stayed or been the
27 subject of a writ of supersedeas or other comparable order.
- 28 (6) ~~"Member insurer" means any~~ Member insurer. – Any person who (i) writes
29 any kind of insurance to which this Article applies under G.S. 58-48-10,
30 including the exchange of reciprocal or interinsurance contracts, and (ii) is
31 licensed and authorized to transact insurance in this State.
- 32 (7) ~~"Net direct written premiums" means direct~~ Net direct written premiums. –
33 Direct gross premiums written in this State on insurance policies to which this
34 Article applies, less return premiums thereon and dividends paid or credited
35 to policyholders on ~~such that~~ direct business. "Net direct written premiums"
36 does not include premiums on contracts between insurers or reinsurers.
- 37 (7a) ~~"Ocean marine insurance" includes~~ Ocean marine insurance. – Includes: (i)
38 marine insurance as defined in G.S. 58-7-15(20)a., except for inland marine,
39 (ii) marine protection and indemnity insurance as defined in G.S. 58-7-15(21),
40 and (iii) any other form of insurance, regardless of the name, label, or
41 marketing designation of the insurance policy, which insures against maritime
42 perils or risks and other related perils or risks, which are usually insured by
43 traditional marine insurance such as hull and machinery, marine builders'
44 risks, and marine protection and indemnity. The perils and risks insured
45 against include loss, damage, or expense, or legal liability of the insured for
46 loss, damage, or expense, arising out of, or incident to, ownership, operation,
47 chartering, maintenance, use, repair, or construction of any vessel, craft, or
48 instrumentality in use in ocean or inland waterways, including liability of the
49 insured for personal injury, illness, death, or for loss or damage to the property
50 of the insured or another person. "Ocean marine insurance" does not include
51 insurance on vessels or vehicles under five tons gross weight.

- 1 (8) "~~Person~~" means ~~any Person~~. – Any individual, corporation, partnership,
- 2 association or voluntary organization.
- 3 (9) "~~Policyholder~~" means ~~the Policyholder~~. – The person to whom an insurance
- 4 policy to which this Article applies was issued by an insurer which has become
- 5 an insolvent insurer.
- 6 (10) "~~Resident~~" means: Resident. – Includes all of the following:
- 7"

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

9 **"§ 58-48-35. Powers and duties of the Association.**

10 (a) The Association shall:

11 (1) Be obligated to the extent of the covered claims existing prior to the

12 determination of insolvency and arising within 30 days after the determination

13 of insolvency, or before the policy expiration date if less than 30 days after

14 the determination, or before the insured replaces the policy or causes its

15 cancellation, if he does so within 30 days of the determination. This obligation

16 includes only the amount of each covered claim that is in excess of fifty dollars

17 (\$50.00) and is less than ~~three hundred thousand dollars (\$300,000)~~ five

18 hundred thousand dollars (\$500,000). However, the Association shall pay the

19 full amount of a covered claim for benefits under a workers' compensation

20 insurance coverage, and shall pay an amount not exceeding ten thousand

21 dollars (\$10,000) per policy for a covered claim for the return of unearned

22 premium. The Association has no obligation to pay a claimant's covered

23 claim, except a claimant's workers' compensation claim, if:

- 24 a. The insured had primary coverage at the time of the loss with a solvent
- 25 insurer equal to or in excess of ~~three hundred thousand dollars~~
- 26 ~~(\$300,000)~~ five hundred thousand dollars (\$500,000) and applicable
- 27 to the claimant's loss; or
- 28 b. The insured's coverage is written subject to a self-insured retention
- 29 equal to or in excess of ~~three hundred thousand dollars (\$300,000)~~ five
- 30 hundred thousand dollars (\$500,000).

31 If the primary coverage or the self-insured retention is less than ~~three hundred~~

32 ~~thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000), the

33 Association's obligation to the claimant is reduced by the coverage and the

34 retention. The Association shall pay the full amount of a covered claim for

35 benefits under a workers' compensation insurance coverage to a claimant

36 notwithstanding any self-insured retention, but the Association has the right

37 to recover the amount of the self-insured retention from the employer.

38 In no event shall the Association be obligated to a policyholder or claimant in

39 an amount in excess of the obligation of the insolvent insurer under the policy

40 from which the claim ~~arises~~ arises, including any applicable specific and

41 aggregate limits. Notwithstanding any other provision of this Article, a

42 covered claim shall not include any claim filed with the Association after the

43 final date set by the court for the filing of claims against the liquidator or

44 receiver of an insolvent insurer.

45"

46 **SECTION 4.(c)** Section 4(b) of this act becomes effective October 1, 2023, and

47 applies to covered claims arising from orders of liquidation becoming final on or after that date.

48

49 **PART V. CHANGES RELATED TO TRANSACTIONS WITHIN AN INSURANCE**

50 **HOLDING COMPANY SYSTEM**

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

1 **"§ 58-19-30. Standards and management of an insurer within an insurance holding**
2 **company system.**

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

5 ...

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

16 (8) All records and data of the insurer held by an affiliate remain the property of
17 the insurer and are subject to control of the insurer. For purposes of this
18 subdivision, "records and data" includes claims and claim files, policyholder
19 lists, application files, litigation files, premium records, rate books,
20 underwriting manuals, personnel records, financial records, or similar
21 information within the possession, custody, or control of the affiliate. An
22 affiliate holding the records and data of an insurer shall do all of the following:

23 a. Ensure, at no additional cost to the insurer, that the records and data
24 controlled by the insurer are identifiable and segregated, or readily
25 capable of segregation, from all other persons' records and data.

26 b. Provide to any receiver of the insurer, upon request: (i) a complete set
27 of all records and data of any type that pertain to the insurer's business,
28 (ii) access to the operating systems on which the records and data are
29 maintained, and (iii) the software that runs those systems either
30 through assumption of licensing agreements or otherwise. The
31 receiver may restrict the use of the records and data by the affiliate if
32 the affiliate is not operating the insurer's business.

33 c. In the event of the affiliate's default under a lease or other agreement,
34 secure a waiver of any landlord lien or other encumbrance to provide
35 the insurer access to all records and data.

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

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

1 pursuant to this subsection shall furnish the required information on a Form D, as prescribed by
 2 the Commissioner:

3 ...
 4 (4) All management agreements, service contracts, tax allocation agreements, or
 5 cost-sharing arrangements. ~~Management agreements, service contracts, and~~
 6 ~~cost-sharing arrangements shall at a minimum and shall,~~ as applicable:

7 ...
 8 f. Define ~~books and records~~ and data of the insurer to include all ~~books~~
 9 ~~and records~~ information developed or maintained under or related to
 10 ~~the agreement.~~ contract or agreement that are otherwise the property of
 11 the insurer. The definition of records and data shall include claims and
 12 claim files, policyholder lists, application files, litigation files,
 13 premium records, rate books, underwriting manuals, personnel
 14 records, financial records, or similar information within the
 15 possession, custody, or control of the affiliate.

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

23 ...
 24 i. Include standards for termination of the contract or agreement with
 25 and without cause.

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

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

34 1. All of the rights of the insurer under the contract or agreement
 35 extend to the receiver. ~~receiver, conservator, or Commissioner.~~

36 2. All ~~books and records~~ will immediately be made available to
 37 ~~the receiver or the Commissioner and shall be turned over to~~
 38 ~~the receiver or Commissioner immediately upon the receiver's~~
 39 ~~or the Commissioner's request.~~ and data of the insurer shall, at
 40 no additional cost to the receiver or Commissioner, be
 41 identifiable and segregated, or readily capable of segregation,
 42 from all other persons' records and data.

43 3. All records and data of the insurer shall be turned over to the
 44 receiver or Commissioner immediately upon the receiver's or
 45 the Commissioner's request. The records and data shall be
 46 turned over in a usable format, and the cost to transfer the
 47 records and data to the receiver or the Commissioner shall be
 48 fair and reasonable.

49 4. At the direction of the receiver or Commissioner, the affiliate
 50 shall make available all employees required to maintain the

- 1 continued performance of operations or services of the insurer
2 deemed essential by the receiver or Commissioner.
- 3 l. Specify that the affiliate has no automatic right to terminate the
4 agreement if the insurer is placed in receivership pursuant to
5 supervision, conservatorship, or receivership, or seized by the
6 Commissioner under Article 30 of this Chapter.
- 7 m. Specify that the affiliate will continue to maintain any systems,
8 programs, or other infrastructure notwithstanding a seizure by the
9 Commissioner under Article 30 of this Chapter, and will make them
10 available to the receiver, for so long as the affiliate continues to receive
11 timely payment for services rendered.all of the following with respect
12 to the performance of services after termination of the contract or
13 agreement if the insurer is placed in supervision, conservatorship,
14 receivership, or seized by the Commissioner under Article 30 of this
15 Chapter.
- 16 1. That the affiliate shall, at the direction of the conservator or
17 Commissioner, provide services deemed essential after
18 termination of the contract or agreement.
- 19 2. That the contract or agreement shall specify the minimum
20 period of time essential services shall be performed after the
21 termination of the contract or agreement.
- 22 3. That, until the insured is released by the receiver,
23 Commissioner, or a court order, performance of essential
24 services after the termination of the contract or agreement shall
25 be provided without regard to pre-receivership unpaid fees, if
26 the affiliate continues to receive timely payment for
27 post-receivership services rendered.
- 28 n. Specify that, if the insurer is placed in supervision, conservatorship,
29 receivership, or seized by the Commissioner under Article 30 of this
30 Chapter, the affiliate will do all of the following:
- 31 1. Maintain any systems, programs, or other infrastructure
32 necessary to the performance of the contract or agreement.
- 33 2. Until the insured is released by the receiver, Commissioner, or
34 a court order, make any systems, programs, or other
35 infrastructure necessary to the performance of the contract or
36 agreement available to the receiver or Commissioner, if the
37 affiliate continues to receive timely payment for
38 post-receivership services rendered.
- 39 o. Specify that, if the insurer is placed into receivership pursuant to
40 Article 30 of this Chapter and portions of the insurer's policies or
41 contracts are eligible for coverage by one or more guaranty
42 associations, then, subject to the receiver's authority over the insurer,
43 the affiliate's commitments under sub-subdivisions k. through n. of
44 this subdivision will extend to the affected guaranty associations.

45 ...

46 (d) For the purposes of this Article, in determining whether an insurer's surplus as regards
47 policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its
48 financial needs, the factors set forth in subdivisions (1) through (11) of this subsection, among
49 others, shall be considered. In determining the adequacy of an insurer's surplus, no single factor
50 is controlling. The Commissioner will consider the net effect of all of the factors in subdivisions

(1) through (11) of this subsection, plus other factors bearing on the financial condition of the insurer. The factors are:

...

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

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

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

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

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

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

"§ 58-30-1. Construction and purpose.

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

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

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

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

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

- (1) Association. – As defined in G.S. 58-48-20.
- (2) Collateral. – Any cash, letters of credit, surety bond, or any other form of security posted by or on behalf of the insured or any person to secure the obligation of the insured under the large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured's obligation to reimburse or pay to the insurer as may be required for other secured obligations.
- (3) Commercially reasonable. – To act in good faith using prevailing industry practices and making all reasonable efforts considering the facts and circumstances of the matter.
- (4) Deductible claim. – Any claim, including a claim for loss and defense and cost containment expense, unless those expenses are excluded, under a large deductible policy that is within the deductible.

1 (5) Large deductible policy. – Includes any of the following:

2 a. A combination of one or more workers' compensation policies and
3 endorsements issued to an insured and contracts or security
4 agreements entered into between the insurer and the insured in which
5 the insured has agreed with the insurer to do either of the following:

6 1. Pay directly the initial portion of any claim under the policy up
7 to a specified dollar amount, or the expenses related to any
8 claim.

9 2. Reimburse the insurer for its payment of any claim or related
10 expenses under the policy up to the specified dollar amount of
11 the deductible.

12 b. Any policy which contains an aggregate limit on the insured's liability
13 for all deductible claims in addition to a per claim deductible limit.
14 The primary purpose and distinguishing characteristic of a large
15 deductible policy is the shifting of a portion of the ultimate financial
16 responsibility under the large deductible policy to pay claims from the
17 insurer to the insured, even though the obligation to initially pay
18 claims may remain with the insurer.

19 c. Any policy with a deductible of one hundred thousand dollars
20 (\$100,000) or greater.

21 "Large deductible policy" does not include: (i) policies, endorsements, or
22 agreements which provide that the initial portion of any covered claim shall
23 be self-insured and further that the insurer shall have no payment obligation
24 within the self-insured retention or (ii) policies that provide for retrospectively
25 rated premium payments by the insured or reinsurance arrangements or
26 agreements, except to the extent that those arrangements assume, secure, or
27 pay the large deductible obligations of an insured.

28 (6) Other secured obligations. – Obligations of an insured to an insurer other than
29 those under or resulting from a large deductible policy, such as those under a
30 reinsurance agreement or other agreement involving retrospective premium
31 obligations the performance of which is secured by collateral that also secures
32 obligations of an insured under a large deductible policy.

33 (b) Applicability. – This section shall apply to workers' compensation large deductible
34 policies insuring workers' compensation liabilities under the Workers' Compensation Act of this
35 State issued by an insurer subject to an order of liquidation as set forth in G.S. 58-30-105 that
36 has become final in the state of entry, whether the liquidation order is entered in this State or in
37 a reciprocal state.

38 (c) Exceptions. – This section shall not apply to claims funded by the Association or a
39 foreign guaranty association net of the deductible unless subsection (d) of this section applies.

40 (d) Handling of Large Deductible Claims. – Large deductible policies shall be
41 administered in accordance with their terms, except to the extent those terms conflict with this
42 section. All large deductible claims resulting from the handling or administration of one or more
43 covered claims of a claimant as defined by G.S. 58-48-20 or the applicable guaranty laws of a
44 foreign guaranty association, including those that may have been funded by an insured before
45 liquidation, shall be turned over to the Association for handling and administration or shall be
46 turned over to the foreign guaranty association in the state where the claim is pending for
47 handling and administration. To the extent the insured funds or pays the deductible claim,
48 pursuant to an agreement with the Association or a foreign guaranty association or otherwise, the
49 funding or payment of a deductible claim directly or to the Association or a foreign guaranty
50 association by or on behalf of the insured will extinguish the obligations, if any, of the liquidator,
51 the Association, or the foreign guaranty association to pay the claim. No charge or claim of any

- 1 kind shall be made against the liquidator, the Association, or a foreign guaranty association on
2 the basis of the funding or payment of a deductible claim by or on behalf of an insured.
- 3 (e) Deductible Claims Paid by the Association or a Foreign Guaranty Association. –
- 4 (1) To the extent the Association or a foreign guaranty association pays any
5 deductible claim for which the insurer would have been entitled to
6 reimbursement from the insured, the Association or foreign guaranty
7 association shall be entitled to the full amount of the reimbursement and
8 available collateral as provided for under this section to the extent necessary
9 to reimburse the Association or the foreign guaranty association.
10 Reimbursements paid to the Association or to a foreign guaranty association
11 pursuant to this subdivision shall not be included in any proposal submitted to
12 the court to disburse assets under G.S. 58-30-180 in any report submitted to
13 the court under G.S. 58-30-225, or as any distribution of assets by the
14 liquidator in the domiciliary state.
- 15 (2) To the extent that the Association or a foreign guaranty association pays a
16 deductible claim that is not reimbursed either from collateral or by payments
17 by an insured, or incurred expenses in connection with large deductible
18 policies that are not reimbursed under this section, the Association or a foreign
19 guaranty association shall be entitled to assert a claim for those amounts in the
20 liquidation proceeding in this State or in the domiciliary state.
- 21 (3) Nothing in this subsection limits any rights of the Association or a foreign
22 guaranty association that may otherwise arise or exist under applicable law to
23 obtain reimbursement from insureds for claim payments made by the
24 Association or the foreign guaranty association under policies of the insurer
25 or for the Association's or foreign guaranty association's related expenses,
26 including without limitation, those rights arising under G.S. 58-48-35 and
27 G.S. 58-48-50, or those arising or existing under similar laws of other states.
- 28 (f) Collections. –
- 29 (1) Unless otherwise agreed to with the liquidator of the insurer in this State or
30 the domiciliary state, the Association or a foreign guaranty association shall
31 collect reimbursements owed for deductible claims as provided for herein and
32 shall take all commercially reasonable actions to collect those
33 reimbursements. The Association or a foreign guaranty association shall
34 promptly bill insureds for reimbursement of covered claims paid by the
35 Association or a foreign guaranty association. The liquidator of the insurer in
36 this State or the domiciliary state shall have the obligation to collect all other
37 reimbursements owed for deductible claims and shall promptly bill insureds
38 or the other responsible persons for reimbursement of deductible claims (i)
39 paid by the insurer prior to liquidation or (ii) paid by the liquidator.
- 40 (2) If the insured does not make payment within the time specified in the large
41 deductible policy, or within 60 days after the date of billing if no time is
42 specified, the liquidator, the Association, or a foreign guaranty association
43 shall take all commercially reasonable actions to collect any reimbursements
44 owed.
- 45 (3) Neither the insolvency of the insurer, nor its inability to perform any of its
46 obligations under the large deductible policy, shall be a defense to the
47 insured's reimbursement obligations under the large deductible policy.
- 48 (4) Allegations of improper handling or excessive or wrongful payment of a
49 deductible claim by the insurer, by the liquidator of the insurer in this State or
50 the domiciliary state, or by the Association or foreign guaranty association

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

1 guaranty association arising under policies of the insolvent insurer, or for
2 related expenses the Association or a foreign guaranty association incurs.
3 (6) Notwithstanding any other provision of this section, if the liquidator of the
4 insurer in this State or the domiciliary state and the Association or a foreign
5 guaranty association agree that the liquidator will collect reimbursements
6 owed for deductible claims, the liquidator is entitled to deduct from the large
7 deductible claim collateral or from the deductible reimbursements reasonable
8 and actual expenses incurred in connection with the collection of the large
9 deductible claim collateral and deductible reimbursements."

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

12
13 **PART VIII. TECHNICAL CORRECTION TO ADD OMITTED WORD TO G.S. 58-33-5**

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

15 "**§ 58-33-5. License required.**

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

18
19 **PART IX. EFFECTIVE DATE**

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