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SENATE BILL DRS45168-LR-54A

Short Title: WC/Self-Insurance Association Amendments.

(Public)

Sponsors: Senator Johnson (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED  
AN ACT AMENDING LAWS CONCERNING THE NORTH CAROLINA  
SELF-INSURANCE ASSOCIATION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 97-130 reads as rewritten:

**"§ 97-130. Definitions.**

~~As used~~ The following definitions apply in this Article:

- (1) ~~"Association" means the Association.~~ – The North Carolina Self-Insurance Security Association established by G.S. 97-131.
- (1a) ~~"Association Aggregate Security System" means the Association Aggregate Security System.~~ – The security system established by the Association under G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured-workers' compensation liabilities incurred while a member through the North Carolina Self-Insurance Security Association.
- (2) ~~"Board" means the Board.~~ – The Board of Directors of the Association established by G.S. 97-132.
- (2a) Collateral. – Cash, certificates of deposits, surety bonds, or irrevocable letters of credit provided or pledged to the Association under G.S. 97-133(a)(2a)g.
- (3) ~~"Commissioner" means the Commissioner.~~ – The North Carolina Commissioner of Insurance.
- (4) ~~"Covered claim" means an Covered claim.~~ – An unpaid claim against an insolvent individual self-insurer or group self-insurer ~~that which~~ relates to an injury that occurs while the individual self-insurer or group self-insurer is a member of the Association and that is compensable under this Chapter. Notwithstanding the foregoing, no workers' compensation claim filed against the Association more than five years after the applicable claims bar date established by a court of competent jurisdiction in the insolvency proceeding of a former member self-insurer shall be considered a covered claim against the Association.
- (5) ~~"Fund" means the Fund.~~ – The North Carolina Self-Insurance Security Fund established by G.S. 97-133.
- (5a) ~~"Group" or "Group self insurer" means a Group or group self-insurer.~~ – A group self-insurer licensed by the Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.
- (5b) ~~"Individual self insurer" means an Individual self-insurer.~~ – An individual employer licensed by the Commissioner under Article 5 of this Chapter.



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- (6) ~~"Member self-insurer" or "member" means an~~ Member self-insurer or member. – An individual self-insurer or group self-insurer that is required to be a member of the Association under this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.
- (7) ~~"Plan" means the~~ Plan. – The Plan of Operation authorized by G.S. 97-134.
- (8) Repealed by Session Laws 2005-400, s. 1.2, effective January 1, 2006.
- (9) ~~"Servicing facility" means those~~ Servicing facility. – Those persons delegated by the Board to settle or compromise claims and to expend Fund assets to pay claims."

**SECTION 2.** G.S. 97-133(a)(2a) reads as rewritten:

- "(2a) Establish and operate the Association Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as follows:
- a. The Association shall annually operate and provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance, reinsurance, or other financial instruments or guarantees owned or entered into by the Association. The Association shall assess the individual self-insurers that participate in the Association Aggregate Security System pursuant to subdivision (3a) of this subsection.
  - b. through d. Repealed by Session Laws 2011-196, s. 10, effective July 1, 2011.
  - e. If the Association determines it is not feasible or practical to operate the Association Aggregate Security System in any given year, it may terminate or suspend the Association Aggregate Security System and shall notify the Commissioner at least 90 days prior to the termination or suspension of the Association Aggregate Security System for that particular year. During any period that the Associate Aggregate Security System is terminated or suspended, every self-insurer shall deposit with the Commissioner, or continue to deposit, the amount required by G.S. 97-185(b3) in the manner prescribed by G.S. 97-185(c).
  - f. Group self-insurers shall not participate in the Association Aggregate Security System.
  - g. As a precondition to continued participation in the Association Aggregate Security System, the Association may require participating self-insurers as provided in G.S. 97-185(a1) to provide collateral as defined in G.S. 97-165(3a) and G.S. 97-130(2a) with the Association based upon the financial condition of the participating self-insurer."

**SECTION 3.** Article 4 of Chapter 97 of the General Statutes is amended by adding a new section to read:

**"§ 97-144. Statute of repose.**

Notwithstanding any other provision of this Article, a workers' compensation claim must be filed against the Association within five years after the claims bar date established by a court of competent jurisdiction in the insolvency proceeding of a former member self-insurer. Any claim not filed within the five-year period shall be forever barred as a claim against the Association."

**SECTION 4.** G.S. 97-165 reads as rewritten:

**"§ 97-165. Definitions.**

~~As used~~ The following definitions apply in this Article:

- (1) ~~"Act" means the~~ Act. – The Workers' Compensation Act established in Article 1 of this Chapter.

- (1a) ~~"Affiliate of" or "person affiliated with" a specific person means a~~ Affiliate of or person affiliated with a specific person. – A person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.
- (1b) Association. – The North Carolina Self-Insurance Security Association established by G.S. 97-131.
- (1c) ~~"Association Aggregate Security System" means the Association Aggregate Security System.~~ – The security system established pursuant to G.S. 97-133 whereby individual self-insurers collectively secure their aggregate ~~self-insured workers' compensation liabilities incurred while a member under the Act through the North Carolina Self-Insurance Security Association.~~
- (2) ~~"Certified audit" means an~~ Certified audit. – An audit on which a certified public accountant or a foreign registered public accounting firm expresses his or her professional opinion that the accompanying statements fairly present the financial position of the self-insurer or the guarantor, in conformity with accounting principles generally accepted in the United States or prepared in accordance with International Financial Reporting Standards.
- (3) ~~"Certified public accountant" or "CPA" means a~~ Certified Public Accountant or CPA. – A CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on financial statements prepared in accordance with United States Generally Accepted Accounting Principles or International Financial Reporting Standards. The Commission may require the self-insurer or the guarantor to replace the CPA with another whose relationship with the self-insurer or the guarantor is independent within the meaning of this definition.
- (3a) Collateral. – Cash, certificates of deposits, surety bonds, or irrevocable letters of credit provided or pledged to the Association under G.S. 97-133(a)(2a)g.
- (4) ~~"Commissioner" means the~~ Commissioner. – The Commissioner of Insurance.
- (4a) ~~"Control", "controlling", "controlled by", and "under common control with"~~ mean the Control, controlling, controlled by, and under common control with. – The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person through ownership of or through proxies for voting of greater than fifty percent (50%) of the voting securities, or in the case of a not-for-profit entity, the power to direct or cause the direction of the management and policies of the entity.
- (5) ~~"Corporate surety" means an~~ Corporate surety. – An insurance company authorized by the Commissioner to write surety business in this State.
- (5a) ~~"Financial statement" means a~~ Financial statement. – A financial statement as defined by accounting principles generally accepted in the United States or a financial statement prepared in accordance with International Financial Reporting Standards.

- (6) ~~"Foreign registered public accounting firm" means a Foreign registered public accounting firm. – A public accounting firm that is organized and operates under the laws of a non-United States jurisdiction, government, or political subdivision and is registered and in good standing with the Public Company Accounting Oversight Board and authorized by the Board to prepare or issue any audit report with respect to any issuer.~~
- (6a) ~~"Guarantor" means a Guarantor. – A person within the same holding company system who controls the applicant, whose financial statement is used by the applicant to become a self-insurer under the Act, and who has guaranteed the payment of the self-insurer's liability under the Act.~~
- (7) ~~"Hazardous financial condition" means that, Hazardous financial condition. – That, based on its present or reasonably anticipated financial condition, a self-insurer or guarantor is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet its obligations with respect to known claims and reasonably anticipated claims or to pay other obligations in the normal course of business.~~
- (7a) ~~"Holding company system" means an Holding company. – An entity comprising two or more affiliated persons.~~
- (7b) ~~Member self-insurer or member. – An individual self-insurer or group self-insurer that is required to be a member of the Association under G.S. 97-130(6), Article 4 of Chapter 97 of the General Statutes, or Part 1 of Article 47 of Chapter 58 of the General Statutes.~~
- (8) ~~"Management" means those Management. – Those persons who are authorized to direct or control the operations of a self-insurer.~~
- (8a) ~~"Person" means an Person. – An individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.~~
- (9) ~~"Qualified actuary" means a Qualified actuary. – A member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries, who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, and is in compliance with G.S. 58-2-171.~~
- (10) ~~"Self-insurer" means an Self-insurer. – An individual self-insurer as defined by G.S. 97-130(5b).~~
- (11) ~~"Subsidiary of" a specific person means an Subsidiary of a specific person. – An affiliate controlled by such person indirectly through one or more intermediaries or an affiliate directly controlled by such person."~~

**SECTION 5.** G.S. 97-185(a1) reads as rewritten:

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

- (1) Individual self-insurers whose licenses have previously been revoked by the Commissioner.
- (2) Individual self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's or Moody's ratings if a minimum debt rating has been established by the Board of Directors of the North Carolina Self-Insurance Security Association for the Association Aggregate Security System.

(3) Individual self-insurers that have defaulted on the payment of their self-insured—workers' compensation ~~liabilities~~liabilities incurred while a member.

(4) Individual self-insurers that fail to submit sufficient financial information to enable the Association to determine their total outstanding workers' compensation liabilities, or their creditworthiness, or ~~both~~both or fail to provide collateral to the Association in accordance with G.S. 97-133(a)(2a)g.

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

**SECTION 6.** This act is effective when it becomes law.