

## Article 4.

### North Carolina Self-Insurance Security Association.

#### **§ 97-130. Definitions.**

As used in this Article:

- (1) "Association" means the North Carolina Self-Insurance Security Association established by G.S. 97-131.
- (1a) "Association Aggregate Security System" means the security system established by the Association under G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities through the North Carolina Self-Insurance Security Association.
- (2) "Board" means the Board of Directors of the Association established by G.S. 97-132.
- (3) "Commissioner" means the North Carolina Commissioner of Insurance.
- (4) "Covered claim" means an unpaid claim against an insolvent individual self-insurer or group self-insurer that relates to an injury that occurs while the individual self-insurer or group self-insurer is a member of the Association and that is compensable under this Chapter.
- (5) "Fund" means the North Carolina Self-Insurance Security Fund established by G.S. 97-133.
- (5a) "Group" or "Group self-insurer" means a group self-insurer licensed by the Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.
- (5b) "Individual self-insurer" means an individual employer licensed by the Commissioner under Article 5 of this Chapter.
- (6) "Member self-insurer" or "member" means an individual self-insurer or group self-insurer that is required to be a member of the Association under this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.
- (7) "Plan" means the Plan of Operation authorized by G.S. 97-134.
- (8) Repealed by Session Laws 2005-400, s. 1.2, effective January 1, 2006.
- (9) "Servicing facility" means those persons delegated by the Board to settle or compromise claims and to expend Fund assets to pay claims. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 1; 1997-362, s. 8; 2005-400, s. 1.2; 2011-196, s. 10.)

#### **§ 97-131. Creation.**

(a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Self-Insurance Security Association. The Association is to provide mechanisms for the payment of covered claims against member self-insurers, to avoid excessive delay in payment of covered claims, to avoid financial loss to claimants because of the insolvency of a member self-insurer, to assist the Commissioner in the detection of self-insurer insolvencies, to fund the Association Aggregate Security System, and to capitalize the Fund to ensure the availability of financial resources to pay covered claims and to fund the activities of the Association.

(b) All individual self-insurers and group self-insurers shall be and remain members of the Association as a condition of being licensed to self-insure in this State. The Association shall

perform its functions under a Plan of Operation established or amended, or both, by the Board and shall exercise its powers through the Board.

- (1) An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of another member's insolvency, as defined in G.S. 97-135, when:
  - a. The individual self-insurer or group self-insurer is a member of the Association when an insolvency occurs, or
  - b. The individual self-insurer or group self-insurer has been a member of the Association at some point in time during the 12-month period immediately preceding the insolvency in question.
- (2) An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs.
- (3) In determining the membership of the Association for the purposes of subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no individual self-insurer or group self-insurer may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer is on that date licensed as an individual self-insurer by the Commissioner under Article 5 of this Chapter or a group of employers is at that time licensed as a group self-insurer by the Commissioner under Article 47 of Chapter 58 of the General Statutes. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 2; 1997-362, s. 9; 2005-400, s. 2; 2011-196, s. 10.)

#### **§ 97-132. Board of directors.**

The Board shall consist of not less than nine directors serving terms as established in the Plan. The directors shall be selected by the members of the Association and shall serve for three-year terms and until a successor is elected and qualified. There is no limitation on the number of terms a director may serve. Directors may be reimbursed from the assets of the Association for expenses incurred by them as directors. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 3; 2005-400, s. 3; 2011-196, s. 10.)

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

- (a) The Association shall:
  - (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.
  - (1a) Administer a fund, to be known as the North Carolina Self-Insurance Security Fund, which shall receive the assets of the North Carolina Self-Insurance Guaranty Fund previously established under subdivision (2) of this subsection, the assessments required by subdivisions (2a) and (3a) of this subsection and any other sums received by the Association. The costs of administering the Association shall be borne by the Fund. The Association is authorized to secure insurance, primary excess insurance, reinsurance, bonds, other insurance, financial guarantees and related financial instruments to effectuate the purposes of the Association. The Board will invest the Fund assets pursuant to an investment policy adopted by the Board and reviewed and approved annually

- by the Department of the State Treasurer. The earnings from investment of Fund assets shall be placed in or credited to the Fund.
- (2) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
  - (2a) Establish 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.
  - (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
  - (3a) Assess members of the Association as follows:
    - a. Association Aggregate Security System assessments. – The Association shall assess each individual self-insurer participating in the Association Aggregate Security System a security system assessment. The amount of the security system assessment charged to each individual self-insurer participating in the Association Aggregate Security System shall be based on the Association's reasonable consideration of all of the following factors:
      - 1. The total amount of assessments necessary to provide aggregate security for all participating individual self-insurers.
      - 2. The individual self-insurer's total workers' compensation liabilities under the Act.
      - 3. The financial strength and creditworthiness of the participating individual self-insurer.
      - 4. Any other relevant factors.
    - b. Special assessment. – In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association may collect a special assessment from the members in an amount sufficient to pay the aggregate value of such covered claims. Each

member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.

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

- (13) Require each member to annually determine its total undiscounted workers' compensation claims liability and require each member to notify the Association of this determination.
- (b) The Association may:
  - (1) Employ or retain such persons, including, but not limited to, adjustors, brokers, accountants, attorneys, financial advisors, investment bankers, placement agents, and consultants, as the Board may determine are necessary to handle claims, perform other duties of, provide services to, and consult with the Association.
  - (2) Borrow funds necessary to effect the purposes of this Article in accord with the Plan, including entering into standby lines of credit.
  - (3) Sue or be sued.
  - (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this section.
  - (5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.
  - (6) Repealed by Session Laws 2011-196, s. 10, effective July 1, 2011.
- (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- (c1) The Association shall provide in its Plan that the functions of administration and adjusting claims shall not be performed by the same entity that provides legal representation to the Association for claims.
- (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006. (1985 (Reg. Sess., 1986), c. 928, s. 1(a); 1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, ss. 4-10; 1989, c. 485, s. 27; 1995, c. 533, s. 1; 1997-475, ss. 2.3, 2.4; 1999-219, s. 7.2; 2003-115, ss. 1, 2; 2005-400, s. 4; 2009-242, s. 1; 2011-196, s. 10.)

**§ 97-134. Plan of Operation.**

The Plan is as follows:

- (1) The Board shall adopt a Plan of Operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association.
- (2) All member self-insurers shall comply with the Plan.
- (3) The Plan shall:
  - a. Establish the procedures whereby all the powers and duties of the Association under G.S. 97-133 will be performed.
  - b. Establish procedures for investing and managing Fund assets.
  - c. Adopt a reasonable mechanism and procedure to achieve equity in assessing members under G.S. 97-133.
  - d. Establish the amount and method of reimbursing members of the Board under G.S. 97-132.
  - e. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims.
  - f. Establish regular places and times for meetings of the Board.
  - g. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board.

- h. Provide that any member self-insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or decision.
- i. Repealed by Session Laws 2011-196, s. 10, effective July 1, 2011.
- j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 11; 2005-400, s. 5; 2011-196, s. 10.)

**§ 97-135. Insolvency.**

A member self-insurer shall be insolvent for the purposes of this Article under any of the following circumstances:

- (1) Determination of insolvency by a court of competent jurisdiction.
- (2) Institution of bankruptcy proceedings by or regarding the member self-insurer.
- (3) The Board determines that the member self-insurer's total liabilities exceed its total assets or the member self-insurer is unable or ceases to pay its debts as they fall due or in the ordinary course of business.
- (4) A member self-insurer is deemed to be insolvent, bankrupt, or in default as defined by the terms of any security instrument created pursuant to the Association Aggregate Security System. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 12; 2005-400, s. 6.1.)

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

- (a) The Commissioner shall:
  - (1) Notify the Association of the existence of an insolvent member self-insurer not later than 30 days after he receives notice of an insolvency pursuant to the standards set forth in G.S. 97-135.
  - (2) Repealed by Session Laws 2011-196, s. 10, effective July 1, 2011.
- (b) The Commissioner may:
  - (1) Require that the Association notify the insureds of the insolvent member self-insurer and any other interested parties of the insolvency and of their rights under this Article. The notifications shall be by mail at their last known addresses, where available; but if required information for notification is not available, notice by publication in a newspaper of general circulation in this State shall be sufficient; and
  - (2) Revoke the designation of any servicing facility if the Commissioner finds claims are being handled unsatisfactorily. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 2005-400, s. 6.2; 2011-196, s. 10.)

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

The Association shall be subject to examination and regulation by the Commissioner. The Board shall submit, not later than June 1 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 2011-196, s. 10.)

**§ 97-138. Tax exemption.**

The Association shall be exempt from payment of all fees and all taxes levied by this State or any of its political subdivisions, except taxes levied on real or personal property. (1985 (Reg. Sess., 1986), c. 928, s. 1(b).)

**§ 97-139. Immunity.**

There shall be no liability on the part of and no cause of action of any nature may arise against any member self-insurer, the Association, or its agents or employees, the Board or its individual members, or the Commissioner or his representatives for any acts or omissions taken by them in the performance of their powers and duties under this Article. The immunity established by this section shall not extend to willful neglect or malfeasance that would otherwise be actionable. (1985 (Reg. Sess., 1986), c. 1013, s. 1.)

**§ 97-140. Nonduplication of recovery.**

Any person having a covered claim that may be recovered under more than one insurance or self-insurance guaranty or security association or its equivalent shall seek recovery first from the association of the place or residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty or security association or its equivalent. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 2005-400, s. 7.)

**§ 97-141. Stay of proceedings.**

All claims or proceedings under this Chapter to which the insolvent member self-insurer is a party either before the Industrial Commission or a court in this State and the running of all time periods against either the insolvent member self-insurer or the Association under this Chapter shall be stayed for 60 days from the later of the date of notice to the Association of the insolvency or the date the Association is notified of a claim or proceeding under this Chapter in order to permit the Association to investigate, prosecute, or defend properly any petition, claim, or appeal under this Chapter, provided that the payment of weekly compensation for incapacity is made whenever time periods or proceedings affecting the payment of weekly compensation are stayed. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 2003-115, s. 6.)

**§ 97-142. Disposition of assets upon dissolution.**

In the event of dissolution of the Association, all assets remaining after provision for satisfaction of all outstanding claims shall be distributed to the State Treasurer for establishment of a reserve to satisfy potential claims against the Association and, all such claims being satisfied, for inclusion in the general fund of the State. (1985 (Reg. Sess., 1986), c. 1013, s. 1.)

**§ 97-143. Use of deposits made by insolvent member self-insurers.**

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend any deposit made by the insolvent member under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the Association to pay covered claims against the insolvent member as required by this Article, and to the extent the deposit is needed to pay

expenses of the Association relating to covered claims against the insolvent member. For insolvent individual member self-insurers that participate in the Association Aggregate Security System, the Association is authorized to pursue recovery under every instrument, contract, and form of security comprising the composite security. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section. (1991, c. 644, s. 25; 1997-362, s. 6; 2005-400, s. 8.)

**§§ 97-144 through 97-164. Reserved for future codification purposes.**