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

(a) The Association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination. This obligation includes only the amount of each covered claim that is in excess of fifty dollars ($50.00) and is less than five hundred thousand dollars ($500,000). However, the Association shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage, and shall pay an amount not exceeding ten thousand dollars ($10,000) per policy for a covered claim for the return of unearned premium. In no event shall the Association be obligated to pay an amount in excess of five hundred thousand dollars ($500,000) for all first and third-party claims under a policy or endorsement providing, or that is found to provide, cybersecurity insurance coverage and arising out of or related to a single insured event, regardless of the number of claims made or the number of claimants. The Association has no obligation to pay a claimant's covered claim, except a claimant's workers' compensation claim, if:

a. The insured had primary coverage at the time of the loss with a solvent insurer equal to or in excess of five hundred thousand dollars ($500,000) and applicable to the claimant's loss; or

b. The insured's coverage is written subject to a self-insured retention equal to or in excess of five hundred thousand dollars ($500,000).

If the primary coverage or the self-insured retention is less than five hundred thousand dollars ($500,000), the Association's obligation to the claimant is reduced by the coverage and the retention. The Association shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage to a claimant notwithstanding any self-insured retention, but the Association has the right to recover the amount of the self-insured retention from the employer.

In no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises, including any applicable specific and aggregate limits. Notwithstanding any other provision of this Article, a covered claim shall not include any claim filed with the Association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(2) Be deemed the insurer to the extent of the Association's obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. However, the Association has the right but not the obligation to defend an insured who is not a resident of this State at the time of the insured event unless the property from which the claim arises is permanently located in this State in which instance the Association does have the obligation to defend the matter in accordance with policy.

(3) Allocate claims paid and expenses incurred among the two accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the Association under subsection (a) above subsequent to an insolvency, the expenses of handling covered claims

subsequent to an insolvency, the cost of examinations under G.S. 58-48-60 and other expenses authorized by this Article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account; provided, for purposes of assessment only, premiums otherwise reportable by a servicing insurer under any plan of operation approved by the Commissioner of Insurance under Articles 45 or 46 of this Chapter shall not be deemed to be the net direct written premiums of such servicing insurer or association, but shall be deemed to be the net direct written premiums of the individual insurers to the extent provided for in any such plan of operation. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent (2%) of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a license by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(4) 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. This requirement is subject to the following provisions:
   a. When investigating, adjusting, compromising, or settling claims, the Association may appoint, substitute, and direct legal counsel for the defense of covered claims and appoint and direct other service providers for covered services.
   b. The Association may pay in any order that it deems reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims.

(5) Notify such persons as the Commissioner directs under G.S. 58-48-45(b)(1).

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Commissioner, but such designation may be declined by a member insurer.

(7) 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 and shall pay the other expenses of the Association authorized by this Article.

(8) Have the right to review and contest settlements, releases, compromises, waivers, and judgments to which the insolvent insurer or its insureds were

parties prior to the entry of the order of liquidation. This right is subject to the following provisions:

a. In addition to any defenses available to the insurer, the Association may assert any statutory defenses or rights of offset against any settlement, release, compromise, or waiver executed by an insured or the insurer or any judgment taken against the insured or the insurer.

b. The Association is not bound by a settlement, release, compromise, or waiver executed by an insured or the insurer or any judgment entered against an insured or the insurer by consent or through a failure to exhaust all appeals if the settlement, release, compromise, waiver, or judgment was:

1. Executed or entered within 120 days prior to the entry of an order of liquidation, and the insured or the insurer did not use reasonable care in entering into the settlement, release, compromise, waiver, or judgment, or did not pursue all reasonable appeals of an adverse judgment; or
2. Executed by or taken against an insured or the insurer based on default, fraud, collusion, or the insurer's failure to defend.

c. If a court of competent jurisdiction finds that the Association is not bound by a settlement, release, compromise, waiver, or judgment for any of the reasons described in sub-subdivision b. of this subdivision, the settlement, release, compromise, waiver, or judgment shall be set aside, and the Association shall be permitted to defend any covered claim on the merits. The settlement, release, compromise, waiver, or judgment may not be considered as evidence of liability or damages in connection with any claim brought against the Association or any other party under this Article.

d. Any covered claims arising from any judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured shall, upon application and notice by the Association, be vacated and set aside by the same court in which such judgment, order, decision, verdict, or finding is entered, and the Association either on its own behalf or on behalf of any insured or an insolvent insurer shall be permitted to defend against such claim on the merits. Any party who has obtained any such judgment or order shall have the right, upon application and notice, to have the judgment or order restored if within 90 days following the entry of the judgment or order the Association has not notified such party and the court that it intends to defend the matter on the merits.

(b) The Association may:

(1) Employ or retain such persons as are necessary to handle claims and perform other duties of the Association.

(2) Borrow funds necessary to effect the purposes of this Article in accord with the plan of operation.

(3) Sue or be sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this Article.

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this Article.

(6) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

(7) Be designated or may contract as a servicing facility for any entity which may be recommended by the Association's board of directors and approved by the Commissioner of Insurance. (1971, c. 670, s. 1; 1977, c. 343; 1979, c. 295, s. 1; 1985, c. 613, ss. 5, 6; 1989, c. 206, s. 3; 1991 (Reg. Sess., 1992), c. 802, s. 4; 1999-132, s. 9.1; 2009-130, s. 1; 2023-133, s. 3(b); 2025-45, s. 5(c).)