

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 306
Committee Substitute Favorable 4/12/99

Short Title: Insurance Amendments/AB.

(Public)

Sponsors:

Referred to:

March 4, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO CONDUCT
3 HEARINGS AND ADOPT CERTAIN RULES RELATED TO THE BEACH AND
4 FAIR PLANS, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND
5 HUMAN SERVICES TO APPROVE ADDITIONAL BEDS FOR CONTINUING
6 CARE RETIREMENT FACILITIES UNDER CERTAIN CIRCUMSTANCES, TO
7 REVISE THE LAW PROHIBITING DISCRIMINATION IN THE TREATMENT
8 OF HANDICAPPED AND DISABLED PERSONS, TO GOVERN MANAGED
9 CARE WITH REGARD TO WORKERS' COMPENSATION, TO EXEMPT
10 COMMERCIAL AIRCRAFT INSURANCE FROM STATE REGULATION, TO
11 REQUIRE ADDITIONAL INFORMATION FROM SURPLUS LINES
12 LICENSEES, TO CLARIFY WHICH SECTIONS OF THE GENERAL STATUTES
13 APPLY TO SURPLUS LINES INSURANCE, TO AUTHORIZE THE SECRETARY
14 OF REVENUE TO PROVIDE THE NORTH CAROLINA SELF-INSURANCE
15 GUARANTY ASSOCIATION WITH INFORMATION ON SELF-INSURERS'
16 PREMIUMS, TO REPEAL THE REQUIREMENT FOR A BIENNIAL REPORT
17 FROM THE DEPARTMENT OF INSURANCE, TO REPEAL THE AGENCY
18 BUSINESS CESSATION LAW, AND TO AUTHORIZE THE COMMISSIONER
19 TO ADOPT RULES RECOGNIZING NEW ANNUITY MORTALITY TABLES.

1 The General Assembly of North Carolina enacts:

2
3 PART I. HEARINGS AND FAIR AND BEACH PLANS APPEALS.

4 Section 1.1. G.S. 58-2-50 reads as rewritten:

5 **"§ 58-2-50. ~~Examinations~~ Examinations, hearings, and investigations.**

6 All ~~examinations~~ examinations, hearings, and investigations provided for by this
7 Chapter may be conducted by the Commissioner personally or by one or more deputies,
8 investigators, actuaries, examiners or employees designated for the purpose. If the
9 Commissioner or any investigator appointed to conduct the investigations is of the
10 opinion that there is evidence to charge any person or persons with a criminal violation of
11 any provision of this Chapter, the Commissioner may arrest with warrant or cause the
12 person or persons to be arrested. All hearings shall, unless otherwise specially provided,
13 be held in accordance with this Article and Article 3A of Chapter 150B of the General
14 Statutes and at a time and place designated in a written notice given by the Commissioner
15 to the person cited to appear. The notice shall state the subject of inquiry and the specific
16 charges, if any."

17 Section 1.2. G.S. 58-45-50 reads as rewritten:

18 **"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**
19 **Commissioner to superior court.**

20 Any person or any insurer who may be aggrieved by an act, ruling or decision of the
21 Association other than an act, ruling or decision relating to the cause or amount of a
22 claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the
23 Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the
24 appeal shall be in accordance with ~~the procedure set forth in G.S. 58-2-50; rules adopted by~~
25 the Commissioner: Provided, however, the Commissioner is authorized to appoint a
26 member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of
27 hearing ~~such~~ those appeals and a ruling based upon ~~such~~ the hearing shall have the same
28 effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or
29 decision of the Commissioner may appeal as is provided ~~by the provisions of~~ in G.S. 58-2-
30 75.

31 No later than 20 days before each hearing, the appellant shall file with the
32 Commissioner or ~~his~~ the Commissioner's designated hearing officer and shall serve on the
33 appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the
34 appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing,
35 the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and
36 shall serve on the appellant a written statement of ~~his~~ the appellee's case and any evidence
37 ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and~~
38 ~~transcribed. The cost of such recording and transcribing shall be borne equally by the appellant~~
39 ~~and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed~~
40 ~~for his share of such costs by the other party.~~ The procedures governing recordings of
41 hearings and, if necessary, transcripts of recordings, as well as the fees for copies of
42 recordings and transcripts, shall be determined by rules adopted by the Commissioner.
43 Each party shall, on a date determined by the Commissioner or ~~his~~ the designated hearing

1 officer, but not sooner than 15 days after delivery of the completed transcript to the party,
2 submit to the Commissioner or ~~his~~the designated hearing officer and serve on the other
3 party, a proposed order. The Commissioner or ~~his~~the designated hearing officer shall
4 then issue an order."

5 Section 1.3. G.S. 58-46-30 reads as rewritten:

6 **"§ 58-46-30. Appeals; judicial review.**

7 The association shall provide reasonable means, to be approved by the Commissioner,
8 whereby any person or insurer affected by any act or decision of the administrators of the
9 Plan or underwriting association, other than an act or decision relating to the cause or
10 amount of a claimed loss, may be heard in person or by an authorized representative,
11 before the governing board of the association or a designated committee. Any person or
12 insurer aggrieved by any decision of the governing board or designated committee, may
13 be appealed to the Commissioner within 30 days ~~from~~after the date of ~~such~~the ruling or
14 decision. The Commissioner, after a hearing held ~~pursuant to the procedure set forth in G.S.~~
15 ~~58-2-50,~~under rules adopted by the Commissioner, shall issue an order approving or
16 disapproving the act or decision with respect to the matter ~~which~~that is the subject of
17 appeal. The Commissioner ~~is authorized to~~may appoint a member of ~~his~~the
18 Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~the appeals
19 and a ruling based on ~~such~~the hearing shall ~~have~~has the same effect as if heard by the
20 ~~Commissioner personally.~~Commissioner. All persons or insurers or their representatives
21 aggrieved by any order or decision of the Commissioner may appeal as provided ~~by the~~
22 ~~provisions of~~in G.S. 58-2-75.

23 No later than 20 days before each hearing, the appellant shall file with the
24 Commissioner or ~~his~~the designated hearing officer and shall serve on the appellee a
25 written statement of ~~his~~the appellant's case and any evidence ~~he~~that the appellant intends
26 to offer at the hearing. No later than five days before ~~such~~the hearing, the appellee shall
27 file with the Commissioner or ~~his~~the designated hearing officer and shall serve on the
28 appellant a written statement of ~~his~~the appellee's case and any evidence ~~he~~that the
29 appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed.~~
30 ~~The cost of such recording and transcribing shall be borne equally by the appellant and appellee;~~
31 ~~provided that upon any final adjudication the prevailing party shall be reimbursed for his share of~~
32 ~~such costs by the other party.~~The procedures governing recordings of hearings and, if
33 necessary, transcripts of recordings, as well as the fees for copies of recordings and
34 transcripts, shall be determined by rules adopted by the Commissioner. Each party shall,
35 on a date determined by the Commissioner or ~~his~~the designated hearing officer, but not
36 sooner than 15 days after delivery of the completed transcript to the party, submit to the
37 Commissioner or ~~his~~the designated hearing officer and serve on the other party, a
38 proposed order. The Commissioner or ~~his~~the designated hearing officer shall then issue
39 an order."

40
41 **PART II. CONTINUING CARE RETIREMENT RECEIVERSHIPS.**

42 Section 2. Article 64 of Chapter 58 of the General Statutes is amended by
43 adding a new section to read:

1 **"§ 58-64-46. Receiverships; exception for facility beds.**

2 When the Commissioner has been appointed as a receiver under Article 30 of this
3 Chapter for a provider or facility subject to this Article, the Department of Health and
4 Human Services may, notwithstanding any other provision of law, accept and approve the
5 addition of beds for that facility if it appears to the court, upon petition of the
6 Commissioner or the provider, or on the court's own motion, that (i) the best interests of
7 the facility or (ii) the welfare of persons who have previously contracted with the
8 provider or may contract with the facility may be best served by the addition of adult care
9 home beds."

10
11 **PART III. HANDICAPPED PERSONS.**

12 Section 3.1. G.S. 168-10 reads as rewritten:

13 **"§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.**

14 Each handicapped person shall have the same consideration as any other person for
15 individual accident and health insurance coverage, and no insurer, service corporation,
16 multiple employer welfare arrangement, or health maintenance organization subject to
17 Chapter 58 of the General Statutes solely on the basis of ~~such the~~ person's handicap, shall
18 deny such coverage or benefits. The availability of ~~such insurance coverage or benefits~~
19 shall not be denied solely ~~due to because of~~ the handicap, provided, however, that no such
20 insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions
21 from such coverage, and further provided that handicap; however, any such insurer may
22 charge the appropriate premiums or fees for the risk insured on the same basis and
23 conditions as insurance issued to other ~~persons.~~ persons, in accordance with actuarial and
24 underwriting principles and other coverage provisions prescribed in Chapter 58 of the
25 General Statutes. ~~Nothing contained herein or in any other statute shall restrict or preclude any~~
26 insurer governed by Chapter 58 of the General Statutes from setting and charging a premium or
27 fee based upon the class or classes of risks and on sound actuarial and underwriting principles as
28 determined by such insurer, or from applying its regular underwriting standards applicable to all
29 classes of risks. The provisions of this section shall apply to both corporations governed by
30 Chapter 58 of the General Statutes."

31 Section 3.2. G.S. 168-22(b) reads as rewritten:

32 "(b) A family care home shall be deemed a residential use of property for the
33 purposes of determining charges or assessments imposed by political subdivisions or
34 businesses for water, sewer, power, telephone service, cable television, garbage and trash
35 collection, repairs or improvements to roads, streets, and sidewalks, and other services,
36 utilities, and ~~improvements, and for purposes of classification for insurance.~~ improvements."

37
38 **PART IV. WORKERS' COMPENSATION MANAGED CARE.**

39 Section 4.1. G.S. 58-50-65(a) reads as rewritten:

40 "(a) Nothing in Articles 50 through 55 of this Chapter ~~shall apply~~ applies to or affect
41 affects any policy of liability or workers' compensation insurance, except that the
42 provisions of G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55 G.S. 58-50-56(g)
43 and (h) shall apply to policies of workers' compensation ~~insurance.~~ insurance and to

1 individual and group self-funded workers' compensation insurance plans. If there is any
2 conflict between managed care provisions of this Chapter and managed care provisions of
3 Chapter 97 of the General Statutes with respect to workers' compensation insurance, the
4 provisions of Chapter 97 govern."

5 Section 4.2. G.S. 97-2(21) reads as rewritten:

6 "(21) Managed care organization. – The term 'managed care organization'
7 means a preferred provider organization or a health maintenance
8 organization regulated under Chapter 58 of the General Statutes.
9 'Managed care organization' also means a preferred provider benefit
10 plan of an insurance company, hospital, or medical service corporation
11 in which utilization review or quality management programs are used to
12 manage the provision of health care services and benefits under this
13 Chapter."

14 15 **PART V. COMMERCIAL AIRCRAFT INSURANCE.**

16 Section 5.1. G.S. 58-7-15(19) reads as rewritten:

17 "(19) 'Motor vehicle ~~and or~~ aircraft insurance,' meaning insurance against loss
18 of or damage resulting from any cause to motor vehicles or aircraft and
19 their equipment, and against legal liability of the insured for loss or
20 damage to another's property resulting from the ownership, maintenance
21 or use of motor vehicles or aircraft and against loss, damage or expense
22 incident to a claim of such liability. This subdivision does not apply to
23 commercial aircraft as defined in G.S. 58-1-5."

24 Section 5.2. G.S. 58-41-10(a) reads as rewritten:

25 "(a) Except as otherwise provided, this Article applies to all kinds of insurance
26 authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all
27 insurance companies licensed by the Commissioner to write those kinds of insurance.
28 This Article does not apply to insurance written under Articles 21, 36, 37, 45 or 46 of this
29 Chapter; insurance written for residential risks in conjunction with insurance written
30 under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to
31 personal inland marine insurance; to ~~aviation~~ commercial aircraft insurance; to policies
32 issued in this State covering risks with multistate locations, except with respect to
33 coverages applicable to locations within this State; to any town or county farmers mutual
34 fire insurance association restricting its operations to not more than six adjacent counties
35 in this State; nor to domestic insurance companies, associations, orders, or fraternal
36 benefit societies doing business in this State on the assessment plan."

37 Section 5.3. G.S. 58-21-10(8) reads as rewritten:

38 "(8) 'Surplus lines insurance' means any insurance in this State of risks
39 resident, located, or to be performed in this State, permitted to be placed
40 through a surplus lines licensee with a nonadmitted insurer eligible to
41 accept such insurance, other than reinsurance, ~~aviation~~ commercial
42 aircraft insurance, wet marine and transportation insurance, insurance

1 independently procured pursuant to G.S. 58-28-5, life and accident or
2 health insurance, and annuities."

3 Section 5.4. G.S. 58-28-5(a) reads as rewritten:

4 "(a) Except as ~~hereinafter provided~~, otherwise provided in this section, it ~~shall be~~ is
5 unlawful for any company to enter into a contract of insurance as an insurer or to transact
6 insurance business in this State as set forth in G.S. 58-28-10, without a ~~certificate of~~
7 ~~authority~~ license issued by the Commissioner. This section ~~shall~~ does not apply to the
8 following acts or transactions:

9 (1) The procuring of a policy of insurance upon a risk within this State
10 where the applicant is unable to procure coverage in the open market
11 with admitted companies and is otherwise in compliance with Article 21
12 of this ~~Chapter~~; Chapter.

13 (2) Contracts of reinsurance; but not including assumption reinsurance
14 transactions, whereby the reinsuring company succeeds to all of the
15 liabilities of and supplants the ceding company on the insurance
16 contracts that are the subject of the transaction, unless prior approval
17 has been obtained from the ~~Commissioner~~; Commissioner.

18 (3) Transactions in this State involving a policy lawfully solicited, written
19 and delivered outside of this State covering only subjects of insurance
20 not resident, located or expressly to be performed in this State at the
21 time of issuance, and which transactions are subsequent to the issuance
22 of such ~~policy~~; policy.

23 (4) Transactions in this State involving group life insurance, group
24 annuities, or group, blanket, or franchise accident and health insurance
25 where the master policy ~~of such~~ for the insurance was lawfully issued
26 and delivered in a state ~~where~~ in which the company was authorized to
27 transact ~~business~~; business.

28 (5) Transactions in this State involving all policies of insurance issued ~~prior~~
29 ~~to~~ before July 1, ~~1967~~; 1967.

30 (6) The procuring of contracts of insurance issued to a nuclear ~~insured~~;
31 insured. As used in this subdivision, 'nuclear insured' means a public
32 utility procuring insurance against radioactive contamination and other
33 risks of direct physical loss at a nuclear electric generating plant.

34 (7) Insurance independently procured, as specified in subsection (b) of this
35 ~~section~~; section.

36 (8) Insurance on vessels or craft, their cargoes, marine builders' risks,
37 marine protection and indemnity, or other risks commonly insured
38 under marine insurance policies, as distinguished from inland marine
39 insurance policies.

40 (9) Transactions in this State involving commercial aircraft insurance,
41 meaning insurance against (i) loss of or damage resulting from any
42 cause to commercial aircraft and its equipment, (ii) legal liability of the
43 insured for loss or damage to another person's property resulting from

1 the ownership, maintenance, or use of commercial aircraft, and (iii) loss,
2 damage, or expense incident to a liability claim."

3 Section 5.5. G.S. 58-1-5 reads as rewritten:

4 "**§ 58-1-5. Definitions.**

5 In this Chapter, unless the context clearly requires otherwise:

6 (1) 'Alien company' means a company incorporated or organized under the
7 laws of any jurisdiction outside of the United States.

8 (1a) 'Commercial aircraft' means aircraft used in domestic, flag,
9 supplemental, commuter, or on-demand operations, as defined in
10 Federal Aviation Administration Regulations, 14 C.F.R. § 119.3, as
11 amended.

12 (2) 'Commissioner' means the Commissioner of Insurance of North
13 Carolina or an authorized designee of the Commissioner.

14 (3) 'Company' or 'insurance company' or 'insurer' includes any corporation,
15 association, partnership, society, order, individual or aggregation of
16 individuals engaging or proposing or attempting to engage as principals
17 in any kind of insurance business, including the exchanging of
18 reciprocal or interinsurance contracts between individuals, partnerships
19 and corporations. 'Company' or 'insurance company' or 'insurer' does not
20 mean the State of North Carolina or any county, city, or other political
21 subdivision of the State of North Carolina.

22 (4) 'Department' means the Department of Insurance of North Carolina.

23 (5) 'Domestic company' means a company incorporated or organized under
24 the laws of this State.

25 (6) 'Foreign company' means a company incorporated or organized under
26 the laws of the United States or of any jurisdiction within the United
27 States other than this State.

28 (7) 'NAIC' means the National Association of Insurance Commissioners.

29 (8) ~~"Nuclear insured" means a public utility procuring insurance against~~
30 ~~radioactive contamination and other risks of direct physical loss at a~~
31 ~~nuclear electric generating plant.~~

32 (9) 'Person' means an individual, partnership, firm, association, corporation,
33 joint-stock company, trust, any similar entity, or any combination of the
34 foregoing acting in concert. "Person" does not mean the State of North
35 Carolina or any county, city, or other political subdivision of the State
36 of North Carolina.

37 (10) The singular form ~~shall include~~ includes the plural, and the masculine
38 form ~~shall include~~ includes the feminine wherever appropriate."

39
40 **PART VI. SURPLUS LINES FILINGS.**

41 Section 6.1. G.S. 58-21-35 reads as rewritten:

42 "**§ 58-21-35. Duty to file evidence of insurance and affidavits. reports and retain**
43 **affidavits.**

1 (a) Within 30 days after the placing of any surplus lines insurance, the surplus
2 lines licensee shall ~~execute and file with the Commissioner~~ Commissioner a

3 ~~(1) A written report in a format prescribed by the Commissioner~~ regarding
4 the insurance and including the following information:

5 ~~a. (1) The name and address of the insured;~~ insured.

6 ~~b. (2) The identity of the insurer or insurers;~~ insurers.

7 ~~e. (3) A description of the subject and location of the risk;~~ risk.

8 ~~d. (4) The amount of premium charged for the insurance;~~ and insurance.

9 e. ~~Such other pertinent information as the Commissioner may~~
10 ~~reasonably require;~~ and

11 (5) The amount of premium tax for the insurance.

12 (6) The policy period.

13 (7) The policy number.

14 (8) The name, address, telephone number, facsimile telephone number, and
15 electronic mail address of the licensee, as applicable.

16 (9) Any other relevant information the Commissioner may reasonably
17 require.

18 ~~(2) An~~

19 (b) The licensee shall complete and retain an affidavit as to the efforts to place the
20 coverage with admitted insurers and the results thereof of the efforts, in accordance with
21 G.S. 58-21-15. The report and affidavit required by this section and the quarterly report
22 required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed
23 by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

24 Section 6.2. Article 21 of Chapter 58 of the General Statutes is amended by
25 adding a new section to read:

26 **"§ 58-21-2. Relationship to other insurance laws.**

27 Unless surplus lines insurance, surplus lines licensees, or nonadmitted insurers are
28 specifically referenced in a particular section of this Chapter, no sections contained in
29 Articles of this Chapter other than this Article apply to surplus lines insurance, surplus
30 lines licensees, or nonadmitted insurers."

31
32 **PART VII. WORKERS' COMPENSATION SELF-INSURANCE.**

33 Section 7.1. G.S. 105-259(b) is amended by adding a new subdivision to read:

34 "(16a) To provide the North Carolina Self-Insurance Guaranty Association
35 information on self-insurers' premiums as determined under G.S. 105-
36 228.5(b), (b1), and (c) for the purpose of collecting the assessments
37 authorized in G.S. 97-133(a)."

38 Section 7.2. G.S. 97-133 reads as rewritten:

39 **"§ 97-133. Powers and duties of the Association.**

40 (a) The Association shall:

41 ~~(1) Obtain from each member self-insurer and file with the Commissioner~~
42 ~~individual reports specifying the aggregate benefits each member paid~~
43 ~~during the previous calendar year, and the annual standard premium that~~

1 would have been paid by the individual member self insurer during the
2 previous calendar year, pursuant to manual rates established by the
3 North Carolina Rate Bureau and using the experience rating procedure
4 approved by the Commissioner for that member self-insurer or the
5 annual premium collected by each group member self-insurer during the
6 prior calendar year. These reports shall be due on or before July 15
7 following the close of that calendar year, except that this deadline may
8 be extended by the Commissioner for up to three additional months for
9 good cause shown.

10 (2) Assess each member of the Association as follows:

11 a. Each individual member self-insurer shall be annually assessed
12 an amount equal to one-quarter of one percent (0.25%) of the
13 annual ~~standard premium gross premiums~~, as determined under
14 G.S. 105-228.5(b), (b1), and (c), that would have been paid by
15 that member self-insurer for workers' compensation insurance
16 during the prior calendar year; and payment to the Association
17 shall be made no later than September 15 following the close of
18 that calendar year. Where any such assessment is paid based in
19 whole or in part upon estimates of annual ~~standard premium gross~~
20 premiums for the prior calendar year, there shall be made in the
21 next year's assessment an adjustment of the assessment of such
22 prior year based on actual audited annual ~~standard premium gross~~
23 premiums. Each group member self-insurer shall be annually
24 assessed an amount equal to one-quarter of one percent (0.25%)
25 of the annual ~~premium collected by gross premiums~~, as
26 determined under G.S. 105-228.5(b), (b1), and (c), of the group
27 member self-insurer during the prior calendar year; and payment
28 to the Association shall be made no later than September 15
29 following the close of that calendar year. Regardless of the size
30 of the Fund, during its first 12 months of membership, no
31 member self-insurer may discount or reduce this one-quarter of
32 one percent (0.25%) assessment. Assessments paid by members
33 pursuant to this subdivision shall be credited toward the tax paid
34 by self-insurers under Article 8B of Chapter 105 of the General
35 Statutes. For the purpose of making the assessments authorized
36 by this subsection and subsections (c) and (d) of this section, the
37 Secretary of Revenue shall provide to the Association the self-
38 insurer premium and payroll information as determined under
39 G.S. 105-228.5(b), (b1), and (c), and the Commissioner shall
40 provide to the Association the group self-insurer premium
41 information reported to the Commissioner under G.S. 58-47-75
42 and G.S. 58-2-165.

- 1 b. Each member self-insurer shall be notified of the assessment no
2 later than 30 days before it is due.
- 3 c. If a self-insurer is a member of the Association for less than a full
4 calendar year, the annual ~~standard premium-gross premiums~~ shall
5 be adjusted by that portion of the year the self-insurer is not a
6 member of the Association.
- 7 d. If application of the contribution rates referenced in ~~sub-~~
8 ~~subdivisions a. and b.~~ sub-subdivision a. of this subdivision would
9 produce an amount in excess of the five million dollar
10 (\$5,000,000) limits of the fund, an equitable proration may be
11 made; provided that every self-insurer that becomes a member of
12 the Association shall pay an initial assessment, in an amount
13 established by the Board, regardless of the size of the fund at the
14 time the member joins the Association.

- 15 (3) Administer a fund, to be known as the North Carolina Self-Insurance
16 Guaranty Fund, which shall receive the assessments required in
17 subdivision (2) of this subsection. Once the Fund reaches five million
18 dollars (\$5,000,000), no further assessments shall be made except initial
19 assessments of new member self-insurers that are required to be made in
20 subdivision (2)d. of this subsection. Assessments may be subsequently
21 made only to maintain the Fund at a level of five million dollars
22 (\$5,000,000). In its discretion, the Board may determine that the assets
23 of the Fund should be segregated, or, that a separate accounting shall be
24 made, in order to identify that portion of the Fund which represents
25 assessments paid by individual self-insurers and that portion of the Fund
26 which represents assessments paid by group self-insurers. If the Board
27 determines to segregate the Fund in this manner, the Association shall
28 thereafter pay covered claims against individual member self-insurers
29 from that portion of the Fund which represents assessments against
30 individual self-insurers and shall thereafter pay covered claims against
31 group member self-insurers from that portion of the Fund which
32 represents assessments against group self-insurers. The cost of
33 administration incurred by the Association shall be borne by the Fund
34 and the Association is authorized to secure reinsurance and bonds and to
35 otherwise invest the assets of the Fund to effectuate the purpose of the
36 Association, subject to the approval of the Commissioner. All earnings
37 from investment of Fund assets shall be placed in or credited to the
38 Fund.

39 The Association may purchase primary excess insurance from an
40 insurer licensed by the Commissioner for the appropriate lines of
41 authority to defray its exposure to loss occasioned by the default of one
42 of its members. The terms of any excess insurance so purchased shall be
43 limited to providing coverage of liabilities which exceed the Fund's

- 1 assets after the payment by member self-insurers of the maximum post-
2 insolvency assessment provided in subdivision (c)(1) of this section
3 herein and the Association shall fund any such purchase by levying a
4 special assessment on its members for this purpose or by application of
5 any unencumbered earnings of the Fund or any other available funds.
6 The Association may obtain from each member any information the
7 Association may reasonably require in order to facilitate the securing of
8 this primary excess insurance. The Association shall establish
9 reasonable safeguards designed to insure that information so received is
10 used only for this purpose and is not otherwise disclosed;
- 11 (4) Be obligated to the extent of covered claims occurring prior to the
12 determination of the member self-insurer's insolvency, or occurring
13 after such determination but prior to the obtaining by the self-insurer of
14 workers' compensation insurance as otherwise required under this
15 Chapter. The Association shall pay claims against a self-insurer that are
16 not or have not been paid as a result of a determination of insolvency or
17 the institution of bankruptcy or receivership proceedings that occurred
18 prior to the effective date of this Article.
- 19 (5) After paying any claim resulting from a self-insurer's insolvency, be
20 subrogated to the rights of the injured employee and dependents and be
21 entitled to enforce liability against the self-insurer by any appropriate
22 action brought in its own name or in the name of the injured employee
23 and dependents;
- 24 (6) Assess the Fund in an amount necessary to pay only:
- 25 a. The obligations for the Association under this Article subsequent
26 to an insolvency;
- 27 b. The expenses of handling covered claims subsequent to an
28 insolvency;
- 29 c. The cost of examinations under G.S. 97-137; and
30 d. Other expenses authorized by this Article;
- 31 (7) Investigate claims brought against the Association and adjust,
32 compromise, settle, and pay covered claims to the extent of the
33 Association's obligation; and deny all other claims. The Association
34 may review settlements to which the insolvent self-insurer was a party
35 to determine the extent to which such settlements may be properly
36 contested;
- 37 (8) Notify such persons as the Commissioner directs under G.S. 97-136;
- 38 (9) Handle claims through its employees or through one or more self-
39 insurers or other persons designated as servicing facilities. Designation
40 of a servicing facility is subject to the approval of the Commissioner,
41 but designation of a member self-insurer as a servicing facility may be
42 declined by such self-insurer;

- 1 (10) Reimburse each servicing facility for obligations of the Association paid
2 by the facility and for expenses incurred by the facility while handling
3 claims on behalf of the Association;
- 4 (11) Pay the other expenses of the Association authorized by this section;
5 and
- 6 (12) Establish in the Plan a mechanism to calculate the assessments required
7 by subdivisions ~~(1)~~, ~~(2)~~, (2) and (3) of this subsection by a simple and
8 equitable means to convert from policy or fund years that are different
9 from a calendar year.
- 10 (b) The Association may:
- 11 (1) Employ or retain such persons as are necessary to handle claims and
12 perform other duties of the Association;
- 13 (2) Borrow funds necessary to effect the purposes of this Article in accord
14 with the Plan;
- 15 (3) Sue or be sued;
- 16 (4) Negotiate and become a party to such contracts as are necessary to carry
17 out the purpose of this section; and
- 18 (5) Perform such other acts as are necessary or proper to effectuate the
19 purpose of this section.
- 20 (c) In the event that the assets of the Fund are not sufficient to pay the obligations
21 of the Association, then the Association shall impose an additional assessment upon its
22 members, which shall be known as a post-insolvency assessment which shall be imposed
23 as follows:
- 24 (1) Each individual member self-insurer shall be assessed in an amount not
25 to exceed two percent (2%) each year of the annual ~~standard premium~~
26 gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c),
27 that would have been paid by that member self-insurer during the prior
28 calendar year. The assessments of each individual member self-insurer
29 shall be in the proportion that the annual ~~standard premium gross~~
30 premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the
31 individual member self-insurer for the premium calendar year bears to
32 the annual ~~standard premium gross premiums~~ of all individual member
33 self-insurers for the preceding calendar year. For group member self-
34 insurers, the assessment shall not exceed two percent (2%) each year the
35 annual premium collected by that group member self-insurer during the
36 prior calendar year. The assessments of each group member self-insurer
37 shall be in the proportion that the annual ~~collected premium gross~~
38 premiums of the group member self-insurer for the premium calendar
39 year bears to the annual ~~collected premium gross premiums~~ of all group
40 member self-insurers for the preceding calendar year.
- 41 (2) Each member self-insurer shall be notified of the assessment no later
42 than 30 days before it is due.

- 1 (3) The Association may exempt or defer, in whole or in part, the
2 assessment of any member self-insurer, if the assessment would cause
3 that member's financial statement to reflect liabilities in excess of assets.
- 4 (4) Delinquent assessments, except as provided in subdivision (3) of this
5 subsection, shall bear interest at the rate to be established by the Board,
6 but not to exceed the discount rate of the Federal Reserve Bank,
7 Richmond, Virginia, on the due date of the assessment, plus four
8 percent (4%) annually, computed from the due date of the assessment.
- 9 (5) The Association shall establish in the Plan a mechanism to calculate the
10 assessments required by subdivision (1) of this subsection by a simple
11 and equitable means to convert from policy or fund years that are
12 different from a calendar year.

13 (d) No individual member self-insurer may be assessed in any calendar year an
14 amount greater than two and one-half percent (2.5%) of the annual ~~standard premium gross~~
15 premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been
16 paid by that individual member self-insurer during the prior calendar year. No group
17 member self-insurer may be assessed in any calendar year an amount greater than two
18 and one-half percent (2.5%) of the annual ~~premium collected by gross premiums of that~~
19 group member self-insurer during the prior calendar year. If the maximum assessment
20 does not provide in any one year an amount sufficient to make all necessary payments,
21 the funds available shall be prorated and the unpaid portion shall be paid as soon
22 thereafter as funds become available. There shall be established in the Plan a mechanism
23 to calculate the assessments required by this section by a simple and equitable means to
24 convert from policy or fund years that are different from a calendar year."
25

26 PART VIII. REPEAL REQUIREMENT OF BIENNIAL REPORT.

27 Section 8. G.S. 58-2-120 reads as rewritten:

28 "§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.

29 ~~The Commissioner shall biennially submit to the General Assembly, through the~~
30 ~~Governor, a report of his official acts, including a summary of official rulings and~~
31 ~~regulations.—The Commissioner shall, from time to time, report to the Governor and the~~
32 ~~General Assembly any change or changes which that in his the Commissioner's opinion~~
33 ~~should be made in the laws relating to insurance and other subjects pertaining to his~~
34 ~~department. On or before the first day of February of each year in which the General~~
35 ~~Assembly is in session he shall make to the Governor the recommendations called for in~~
36 ~~this section, to be transmitted to the General Assembly, with the last annual report of this~~
37 ~~Department, including receipts and disbursements.—the Department."~~
38

39 PART IX. REPEAL THE AGENCY BUSINESS CESSATION LAW.

40 Section 9. G.S. 58-41-35 is repealed.

41 Section 9.1. G.S. 58-41-40(a) reads as rewritten:

42 "(a) There is no liability on the part of and no cause of action for defamation or
43 invasion of privacy arises against any insurer or its authorized representatives, agents, or

1 employees, or any licensed insurance agent or broker, for any communication or
2 statement made, unless shown to have been made in bad faith with malice, in any of the
3 following:

- 4 (1) A written notice of cancellation under ~~G.S. 58-41-15~~, G.S. 58-41-15 or of
5 nonrenewal under G.S. 58-41-20, ~~or of cessation of business through an~~
6 ~~agency under G.S. 58-41-35~~, specifying the reasons therefor; for
7 cancellation.
- 8 (2) Communications providing information pertaining to ~~such cancellation,~~
9 ~~nonrenewal, or cessation of business through an agency;~~ the cancellation or
10 nonrenewal.
- 11 (3) Evidence submitted at any court proceeding, administrative hearing, or
12 informal inquiry in which ~~such cancellation, nonrenewal, or cessation of~~
13 ~~business through an agency~~ the cancellation or nonrenewal is an issue."

14 15 **PART X. MORTALITY TABLE AND RESERVES UPDATE.**

16 Section 10. G.S. 58-58-50(k) reads as rewritten:

17 "(k) The Commissioner shall adopt rules containing the minimum standards
18 applicable to the valuation of health plans. The Commissioner may also adopt rules for
19 the purpose of recognizing new annuity mortality tables for use in determining reserve
20 liabilities for annuities and may adopt rules that govern minimum valuation standards for
21 reserves of life insurance companies. In adopting these rules, the Commissioner may
22 consider model laws and regulations promulgated and amended from time to time by the
23 NAIC."

24 25 **PART XI. EFFECT OF HEADINGS.**

26 Section 11. The headings to the parts of this act are a convenience to the
27 reader and are for reference only. The headings do not expand, limit, or define the text of
28 this act.

29 30 **PART XII. EFFECTIVE DATE.**

31 Section 12. Sections 2 through 11 of this act become effective October 1,
32 1999. The remainder of this act is effective when it becomes law, but Sections 1.1, 1.2,
33 and 1.3 of this act shall not apply to appeals pending on the date this act becomes law.