

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1895  
Committee Substitute Favorable 6/12/06

Short Title: Establish High-Risk Pool.

(Public)

Sponsors:

Referred to:

May 11, 2006

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK  
3 POOL AND TO APPROPRIATE FUNDS THEREFOR.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.1.** Article 50 of Chapter 58 of the General Statutes is amended  
6 by adding a new Part to read:

7 "Part 7. North Carolina Health Insurance Risk Pool.

8 **"§ 58-50-245. Definitions.**

9 For the purposes of this Part:

- 10 (1) "Administrator" means the Pool Administrator selected by the Board  
11 in accordance with this Part.
- 12 (2) "Benefit plan" means coverage offered by the Pool to eligible  
13 individuals.
- 14 (3) "Board" means the Board of Directors of the Pool.
- 15 (4) "Covered person" means any individual resident of this State,  
16 excluding dependents, who is eligible to receive health benefits from  
17 any insurer.
- 18 (5) "Church plan" has the meaning given that term under section 3(33) of  
19 the Employee Retirement Income Security Act of 1974.
- 20 (6) "Creditable coverage" has the same meaning as prescribed in  
21 G.S. 58-68-30(c)(1).
- 22 (7) "Dependent" means a resident spouse or unmarried child under the age  
23 of 19 years, a child who is a full-time student under the age of 23 years  
24 and who is financially dependent upon the parent, a child who is over  
25 18 years of age and for whom a person may be obligated to pay child  
26 support, or a child of any age who is disabled and dependent upon the  
27 parent.
- 28 (8) "Family member" means a parent, grandparent, brother, sister, or child  
29 of a dependent residing with the insured.

- 1           (9)    "Federally defined eligible individual" has the same meaning as  
2           "eligible individual" as prescribed in G.S. 58-68-60(b).
- 3           (10)   "Governmental plan" has the same meaning as prescribed in  
4           G.S. 58-68-60(h)(2).
- 5           (11)   "Group health plan" means an employee welfare benefit plan as  
6           defined in section 3(1) of the Employee Retirement Income Security  
7           Act of 1974 to the extent that the plan provides medical care, including  
8           items and services paid for as medical care to employees or their  
9           dependents, as defined under the terms of the plan directly or through  
10          insurance, reimbursement, or otherwise.
- 11          (12)   "Health insurance coverage" shall have the same meaning as  
12          prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not  
13          include benefits described in G.S. 58-68-25(b).
- 14          (13)   "Insurance arrangement" means a plan, program, contract, or other  
15          arrangement through which health care services are provided by an  
16          employer to its officers or employees but does not include health care  
17          services covered through an insurer.
- 18          (14)   "Insured" means an individual who is eligible to receive benefits from  
19          the Pool. The term "insured" includes dependents and family members,  
20          as applicable.
- 21          (15)   "Insurer" means any entity that provides health insurance coverage in  
22          this State. For the purposes of this Part, insurer includes an insurance  
23          company, a hospital or medical service corporation, a health  
24          maintenance organization, a multiple employer welfare arrangement, a  
25          third-party administrator or claims processor, an administrative service  
26          organization, or any other nongovernmental entity providing a health  
27          benefit plan subject to State insurance regulation.
- 28          (16)   "Medical care" means amounts paid for:
- 29            a.    The diagnosis, cure, mitigation, treatment, or prevention of  
30            disease, or amounts paid for the purpose of affecting any  
31            structure or function of the body;
- 32            b.    Transportation primarily for and essential to medical care  
33            referred to in sub-subdivision a. of this subdivision; and
- 34            c.    Insurance covering medical care referred to in sub-subdivisions  
35            a. and b. of this subdivision.
- 36          (17)   "Plan of Operation" means the articles, bylaws, and operating rules  
37          and procedures adopted by the Board in accordance with this Part.
- 38          (18)   "Pool" means the North Carolina Health Insurance Risk Pool.
- 39          (19)   "Resident" means an individual who:
- 40            a.    Has been legally domiciled in this State for a period of at least  
41            30 days, except that for a federally defined eligible individual,  
42            there shall not be a 30-day requirement;
- 43            b.    Is legally domiciled in this State on the date of application to  
44            the Pool and who is eligible for enrollment in the Pool as a

1 result of the Health Insurance Portability and Accountability  
2 Act of 1996; or

3 c. Is legally domiciled in this State on the date of application to  
4 the Pool and is eligible for the credit for health insurance costs  
5 under section 35 of the Internal Revenue Code of 1986.

6 (20) "Significant break in coverage" means a period of 63 consecutive days  
7 during all of which the individual does not have any creditable  
8 coverage, except that neither a waiting period nor an affiliation period  
9 is taken into account in determining a significant break in coverage.

10 (21) "Trade Adjustment Assistance Program" (TAA) means Title II of the  
11 Trade Act of 2002, P.L. 107-210.

12 **"§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

13 (a) High-Risk Pool Established. – There is hereby created a nonprofit entity to be  
14 known as the North Carolina Health Insurance Risk Pool. The Pool shall operate under  
15 the supervision and control of the Board of Directors of the Pool.

16 (b) Board of Directors Appointment; Membership. – The Board of Directors of  
17 the North Carolina Health Insurance Risk Pool shall consist of the Commissioner of  
18 Insurance, who shall serve as an ex officio nonvoting member of the Board, and nine  
19 members appointed as follows:

20 (1) Two members of the general public who are not employed by or  
21 affiliated with an insurance company or plan, group hospital, or other  
22 health care provider, and can reasonably be expected to qualify for  
23 coverage in the Pool. Members of the general public include  
24 individuals whose only affiliation with health insurance or health care  
25 coverage is as a covered member. The two members of the general  
26 public shall be appointed as follows:

27 a. One member upon the recommendation of the President Pro  
28 Tempore of the Senate.

29 b. One member upon the recommendation of the Speaker of the  
30 House of Representatives.

31 (2) Seven members appointed by the Commissioner of Insurance, as  
32 follows:

33 a. Two who are insurers, at least one of whom covers the largest  
34 number of persons in the State.

35 b. One who is licensed to sell health insurance in this State.

36 c. Two who represent the medical provider community, one as  
37 recommended by the North Carolina Medical Society and one  
38 as recommended by the North Carolina Hospital Association.

39 d. One who represents small business, as recommended by the  
40 North Carolina Citizens for Business and Industry.

41 e. One who is either a health policy researcher or a health  
42 economist with experience relating to the operation of high-risk  
43 insurance pools.

1       (c) Board of Directors; Terms of Appointment; Vacancies; Compensation. – The  
2 initial Board members shall be appointed as follows: three of the members to serve a  
3 term of three years; three of the members to serve a term of one year; and three of the  
4 members to serve a term of two years. Subsequent Board members shall serve for terms  
5 of three years. A Board member's term shall continue until the member's successor is  
6 appointed. The Commissioner shall appoint a chair to serve for the initial two years of  
7 the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board  
8 members and shall serve for two-year terms. The Commissioner shall fill vacancies in  
9 membership and may remove members from the Board for cause. Board members shall  
10 not be compensated in their capacity as Board members but shall be reimbursed for  
11 reasonable expenses incurred in the necessary performance of their duties.

12       (d) Plan of Operation. – The Board shall submit to the Commissioner a Plan of  
13 Operation for the Pool and any amendments necessary or suitable to assure the fair,  
14 reasonable, and equitable administration of the Plan of Operation. The Plan of  
15 Operation shall become effective upon approval in writing by the Commissioner  
16 consistent with the date on which the coverage under this Part must be made available.  
17 If the Board fails to submit a suitable Plan of Operation within 180 days after the  
18 appointment of the Board of Directors, or at any time thereafter fails to submit suitable  
19 amendments to the Plan of Operation, the Commissioner shall adopt temporary rules  
20 necessary or advisable to effectuate the provisions of this section. The rules shall  
21 continue in force until modified by the Commissioner or superseded by a Plan of  
22 Operation submitted by the Board and approved by the Commissioner. The Plan of  
23 Operation shall:

- 24           (1) Establish procedures for operation of the Pool.
- 25           (2) Establish procedures for selecting a Pool Administrator in accordance  
26 with G.S. 58-50-255.
- 27           (3) Establish procedures to create a fund for administrative expenses,  
28 which shall be managed by the Board.
- 29           (4) Establish procedures for the collection, handling, disbursing,  
30 accounting, assessing and auditing of assets, monies, and claims of the  
31 Pool and the Pool Administrator.
- 32           (5) Develop and implement a program to publicize the existence of the  
33 Pool, the eligibility requirements, and procedures for enrollment,  
34 availability of State premium subsidies, and to maintain public  
35 awareness of the Pool.
- 36           (6) Establish procedures under which applicants and participants may  
37 have grievances reviewed by a grievance committee appointed by the  
38 Board in accordance with G.S. 58-50-295.
- 39           (7) Establish procedures for identifying and confirming income levels of  
40 applicants for Pool coverage who are eligible to receive a State  
41 premium subsidy, if a State premium subsidy is available.
- 42           (8) Provide for other matters as may be necessary and proper for the  
43 execution of the Board's powers, duties, and obligations under this  
44 Part.

1       (e) The Pool shall have the general powers and authority granted under the laws  
2 of this State to health insurers and the specific authority to do all of the following:

3       (1) Enter into contracts as are necessary or proper to carry out the  
4 provisions and purposes of this Part, including the authority, with the  
5 approval of the Commissioner, to enter into contracts with similar  
6 plans of other states for the joint performance of common  
7 administrative functions or with persons or other organizations for the  
8 performance of administrative functions.

9       (2) Sue or be sued, including taking any legal actions necessary or proper  
10 to recover or collect assessments due the Pool.

11       (3) Take legal action as necessary to:

12       a. Avoid the payment of improper claims against the Pool or the  
13 coverage provided by or through the Plan.

14       b. Recover any amounts erroneously or improperly paid by the  
15 Plan.

16       c. Recover any amounts paid by the Pool as a result of mistake of  
17 fact or law.

18       d. Recover other amounts due the Pool.

19       (4) Establish rates and rate schedules in accordance with this Part.

20       (5) Issue policies of insurance in accordance with the requirements of this  
21 Part.

22       (6) Appoint appropriate legal, actuarial, and other committees as  
23 necessary to provide technical assistance in the operation of the Pool,  
24 policy, and other contract design, and any other function within the  
25 Pool's authority.

26       (7) Borrow money to effect the purposes of the Pool. Any notes or other  
27 evidence of indebtedness of the Pool not in default are legal  
28 investments for insurers and may be carried as admitted assets.

29       (8) Establish policies, conditions, and procedures for reinsuring risks of  
30 participating insurers desiring to issue Pool coverage in their own  
31 name. Provision of reinsurance shall not subject the Pool to any of the  
32 capital or surplus requirements, if any, otherwise applicable to  
33 reinsurers.

34       (9) Employ and fix the compensation of employees.

35       (10) Prepare and distribute certificate of eligibility forms and enrollment  
36 instruction forms to insurance producers and to the general public.

37       (11) Provide for reinsurance of risks incurred by the Pool.

38       (12) Issue additional types of health insurance policies to provide optional  
39 coverage, including Medicare supplemental insurance coverage.

40       (13) Provide for and employ cost containment measures and requirements  
41 including preadmission screening, second surgical opinion, concurrent  
42 utilization review, disease management, individual case management,  
43 and other commonly used benefit plan design features for the purpose

1 of making health insurance coverage offered by the Pool more  
2 cost-effective.

3 (14) Design, utilize, contract, or otherwise arrange for the delivery of  
4 cost-effective health care services, including establishing or  
5 contracting with preferred provider organizations, health maintenance  
6 organizations, and other limited network provider arrangements.

7 (15) Adopt bylaws, policies, and procedures as may be necessary or  
8 convenient for the implementation of this Part and the operation of the  
9 Pool.

10 (f) The Board shall operate the Pool in a manner so that the estimated cost of  
11 providing health insurance coverage during any fiscal year is not anticipated to exceed  
12 the total income the Pool expects to receive from policy premiums and other revenue  
13 available to the Pool. The Board may impose a cap on enrollment or may suspend  
14 enrollment for an indefinite period if the Board finds that estimated costs are anticipated  
15 to exceed income.

16 (g) The Board shall make an annual report to the Commissioner, to the Speaker  
17 of the House of Representatives, and to the President Pro Tempore of the Senate. The  
18 report shall summarize the activities of the Pool in the preceding calendar year,  
19 including the net written and earned premiums, benefit plan enrollment, the expense of  
20 administration, and the paid and incurred losses.

21 (h) Neither the Board nor its employees are liable for any obligations of the Pool.  
22 There shall be no liability on the part of and no cause of action of any nature shall arise  
23 against the Pool or its agents or employees, the Board, or the Commissioner or his  
24 representatives for any action taken by them in good faith in the performance of their  
25 powers and duties under this Article. The Board may provide in its bylaws or rules for  
26 indemnification of, and legal representation for, its members and employees.

27 (i) The members of the Board shall comply with the provisions of G.S. 14-234  
28 prohibiting conflicts of interest.

29 **"§ 58-50-255. Administrator.**

30 (a) The Board shall select through a competitive bidding process one or more  
31 authorized insurers or a third-party administrator to administer the Pool. The Board  
32 shall evaluate bids submitted based on criteria established by the Board. The criteria  
33 shall allow for the comparison of information about each bidding administrator and  
34 selection of a Pool Administrator based on at least the following:

35 (1) Proven ability to handle health insurance coverage to individuals.

36 (2) Efficiency and timeliness of the claim processing procedures.

37 (3) Estimated total charges for administering the Pool.

38 (4) Ability to apply effective cost containment programs and procedures  
39 and to administer the Pool in a cost-efficient manner.

40 (5) Financial condition and stability.

41 If a member of the Board has submitted a bid to be selected by the Board as Pool  
42 Administrator, that bidding member of the Board shall not participate in the selection  
43 process or in the Board's final decision on the selection of the Administrator.

1       **(b)**    The Administrator shall serve for a period specified in the contract between  
2 the Pool and the Administrator subject to removal for cause and subject to any terms,  
3 conditions, and limitations of the contract between the Pool and the Administrator. At  
4 least one year before the expiration of each period of service by an Administrator, the  
5 Board shall invite eligible entities, including the current Administrator, to submit bids to  
6 serve as the Administrator. Selection of the Administrator for the succeeding period  
7 shall be made at least six months before the end of the current period.

8       **(c)**    The Administrator shall perform such functions relating to the Pool as may be  
9 assigned to it, including:

10           **(1)**   Determination of eligibility.

11           **(2)**   Payment of claims.

12           **(3)**   Establishment of a premium billing procedure for collection of  
13 premiums from individuals covered under the Pool.

14           **(4)**   Other necessary functions to assure timely payment of benefits to  
15 covered persons under the Pool.

16       **(d)**    The Administrator shall submit regular reports to the Board regarding the  
17 operation of the Pool. The contract between the Board and the Administrator shall  
18 specify the frequency, content, and form of the report.

19       **(e)**    Following the close of each calendar year, the Administrator shall determine  
20 net written and earned premiums, the expense of administration, and the paid and  
21 incurred losses for the year and report this information to the Board and the  
22 Commissioner on a form prescribed by the Commissioner.

23       **(f)**    The Administrator shall be paid as provided in the contract between the  
24 Board and the Administrator.

25       **"§ 58-50-260. Risk Pool rates and policy forms.**

26       **(a)**    The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate  
27 adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any  
28 other actuarial function appropriate to the operation of the Pool. Rates and rate  
29 schedules may be adjusted for appropriate factors such as age, sex, and geographic  
30 variation in claim cost and shall take into consideration appropriate rating factors in  
31 accordance with established actuarial and underwriting practices.

32       **(b)**    The Pool shall determine the standard risk rate by considering the premium  
33 rates charged by other insurers offering health insurance coverage to individuals. The  
34 standard risk rate shall be established using reasonable actuarial techniques and shall  
35 reflect anticipated experience and expenses for the coverage. Pool rates shall be one  
36 hundred fifty percent (150%) of rates established as applicable for individual standard  
37 rates.

38       **(c)**    The Pool shall provide for premium discounts for covered individuals who  
39 are nonsmokers or who are actively participating in a smoking cessation program.  
40 Approval of smoking cessation programs, criteria for active participation in smoking  
41 cessation programs, and discount rates shall be established by the Board, subject to the  
42 approval of the Commissioner.

43       **(d)**    Provider reimbursement rates under Pool coverage shall be limited to the  
44 rates allowed for providers under the Medicare Program.

1       (e) The Pool shall submit all rates and rate schedules and amendments thereto to  
2 the Commissioner for approval, and the Commissioner shall approve the rates and rate  
3 schedules before the Pool may use them. The Commissioner, in evaluating the rates and  
4 rate schedules, shall consider the factors provided in this section. The Pool shall provide  
5 all individuals enrolled in the Pool with at least 45 days notice of any change in Pool  
6 rates or rate schedules.

7       (f) The Pool shall submit all policy forms to the Commissioner for approval, and  
8 the Commissioner shall approve the forms before the Pool may use them. Except for  
9 any provisions that are specifically treated otherwise under this Part, the provisions of  
10 Chapter 58 that apply to benefit plans and policy forms of health insurers generally shall  
11 apply to the benefit plans offered and policy forms used by the Pool.

12 **"§ 58-50-265. Eligibility for Pool coverage.**

13       (a) Any individual who is and continues to be a resident of this State is eligible  
14 for Pool coverage if evidence is provided of:

- 15           (1) A notice of rejection or refusal to issue substantially similar health  
16 insurance coverage for health reasons by an insurer. A rejection or  
17 refusal by an insurer offering only stop-loss, excess loss, or  
18 reinsurance coverage with respect to the applicant is not sufficient  
19 evidence of eligibility;
- 20           (2) An offer to issue health insurance coverage only with a conditional  
21 rider that limits coverage for the individual's high-risk medical  
22 condition;
- 23           (3) A refusal by an insurer to issue health insurance coverage except at a  
24 rate exceeding the Pool rate;
- 25           (4) A diagnosis of the individual with one of the medical or health  
26 conditions listed by the Board in accordance with this section. An  
27 individual diagnosed with one or more of these conditions is eligible  
28 for Pool coverage without applying for other health insurance  
29 coverage;
- 30           (5) In the case of a federally defined eligible individual, the individual's  
31 maintenance of health insurance coverage, of which the most recent  
32 coverage was through an employer-sponsored plan, for the previous 18  
33 months with no gap in coverage greater than 63 days and exhaustion of  
34 any available COBRA or State continuation benefits; or
- 35           (6) An individual who is legally domiciled in this State and is eligible for  
36 the credit for health insurance costs under the Trade Adjustment  
37 Assistance Reform Act of 2002, section 35 of the Internal Revenue  
38 Code of 1986.

39       (b) The Board shall adopt a list of medical or health conditions for which a  
40 person shall be eligible for Pool coverage without applying for health insurance  
41 pursuant to subsection (a) of this section. The Board may amend the list as the Board  
42 considers appropriate.

43       (c) Each dependent of an individual who is eligible for Pool coverage shall also  
44 be eligible for Pool coverage.



1       (d) An individual is not eligible for coverage under the Pool if:

- 2           (1) The individual has or obtains health insurance coverage substantially  
3           similar to or more comprehensive than a Pool policy, or would be  
4           eligible to have coverage if the person elected to obtain it, except that:  
5           a. An individual may maintain other coverage for the period of  
6           time the individual is satisfying any preexisting condition  
7           waiting period under a Pool policy; and  
8           b. An individual may maintain Pool coverage for the period of  
9           time the individual is satisfying a preexisting condition waiting  
10          period under another health insurance policy intended to replace  
11          the Pool policy.  
12          (2) The individual is determined to be eligible for enrollment in the State  
13          Medical Assistance Plan.  
14          (3) The individual has previously terminated Pool coverage unless 12  
15          months have lapsed since the termination, except that this subdivision  
16          shall not apply with respect to an applicant who is a federally defined  
17          eligible individual or to an applicant eligible for or receiving benefits  
18          under the Trade Adjustment Assistance Program.  
19          (4) The individual is an inmate or resident of a public institution, except  
20          that this subdivision shall not apply with respect to an applicant who is  
21          a federally defined eligible individual.  
22          (5) The individual's premiums are paid for or reimbursed under any  
23          government-sponsored program or by any government agency or  
24          health care provider, except as an otherwise qualifying full-time  
25          employee, or dependent thereof, of a government agency or health care  
26          provider. This subdivision shall not apply for individuals receiving  
27          benefits under the Trade Adjustment Assistance Program or to  
28          individuals receiving premium subsidies made available by the State  
29          based on individual income levels.  
30          (6) The individual has in effect on the date Pool coverage takes effect  
31          health insurance coverage from an insurer or insurance arrangement.

32       (e) Coverage under the Pool shall cease:

- 33           (1) On the date an individual is no longer a resident of this State.  
34           (2) On the date an individual requests coverage to end.  
35           (3) Upon the death of the covered individual.  
36           (4) On the date State law requires cancellation of the Pool policy.  
37           (5) At the option of the Pool, 30 days after the Pool makes any inquiry  
38           concerning the individual's eligibility or residence to which the  
39           individual does not reply.  
40           (6) Because the individual has failed to make the payments required under  
41           this Part.

42       (f) Except as provided in subsection (e) of this section, an individual who ceases  
43       to meet the eligibility requirements of this section may be terminated at the end of the  
44       Pool period for which the necessary premiums have been paid.

**"§ 58-50-270. Unfair referral to Pool.**

It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance producer, as defined in G.S. 58-33-10(7), or third-party administrator to refer an individual employee to the Pool or arrange for an individual employee to apply to the Pool for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment, or for the purpose of separating an individual covered by health insurance offered in the individual market.

**"§ 58-50-275. Minimum Pool benefits.**

(a) The Pool shall offer at least two types of health insurance coverage for individuals eligible under G.S. 58-50-265, including preferred provider organizations with different levels of deductibles and cost-sharing, and at least one choice of a health savings account. The covered services and benefit levels may vary between the types of coverage, but at least two types of coverage must, at a minimum, cover the benefits and services outlined in the National Association of Insurance Commissioners' Model Health Pool for Uninsurable Individuals Act and be consistent with comprehensive coverage generally available to persons who are eligible for health insurance other than Medicare. All health insurance products offered by the Pool shall include disease or case management services.

(b) Health insurance products offered by the Pool shall include not less than one million dollars (\$1,000,000) lifetime limit and a sliding scale annual limit of two thousand dollars (\$2,000) to five thousand dollars (\$5,000) on out-of-pocket expenses. The sliding scale shall be based on family income. The Board shall adjust limitations at least once every five years to reflect changes in the medical component of the Consumer Price Index.

**"§ 58-50-280. Preexisting conditions.**

(a) Except as otherwise provided by law, pool coverage shall exclude charges or expenses incurred during the first 12 months following the effective date of coverage as to any condition for which medical advice, care, or treatment was recommended or received as to such conditions during the 12-month period immediately preceding the effective date of coverage, except that no preexisting condition exclusion shall be applied to a federally defined eligible individual.

(b) Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, provided that:

(1) Application for Pool coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Pool shall be effective from the date on which the prior coverage was terminated; and

(2) The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Pool coverage.

**"§ 58-50-285. Nonduplication of benefits.**

(a) The Pool shall be payor of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under coverage shall be reduced by all amounts paid or payable through any other health

1 insurance coverage and by all hospital and medical expense benefits paid or payable  
2 under any workers' compensation coverage, automobile medical payment, or liability  
3 insurance, whether provided on the basis of fault or no-fault, and by any hospital or  
4 medical benefits paid or payable under or provided pursuant to any State or federal law  
5 or program.

6 (b) The Pool shall have a cause of action against an eligible person for the  
7 recovery of the amount of benefits paid that are not for covered expenses. Benefits due  
8 from the Pool may be reduced or refused as a setoff against any amount recoverable  
9 under this subsection.

10 **"§ 58-50-290. Assessments.**

11 (a) For the purposes of providing the funds necessary to carry out the powers and  
12 duties of the Pool, the Board shall assess all insurers at such time and for such amounts  
13 as the Board finds necessary. Assessments shall be due in not less than 30 days after  
14 prior written notice to the insurers and shall accrue interest at twelve percent (12%) per  
15 annum on and after the due date.

16 (b) Each insurer shall be assessed in an amount not to exceed two dollars (\$2.00)  
17 per covered individual insured or reinsured by each insurer per month. The assessment  
18 will be based on actual and expected losses, actuarially appropriate reserves, and  
19 administrative expenses in excess of expected and collected premiums and federal loss  
20 reimbursements, if any, received by the Pool.

21 (c) The Board shall make reasonable efforts designed to ensure that each covered  
22 individual is counted only once with respect to any assessment. For that purpose, the  
23 Board shall require each insurer that obtains excess or stop-loss insurance to include in  
24 its count of covered individuals all individuals whose coverage is insured (including by  
25 way of excess or stop-loss coverage) in whole or in part, except that lives covered under  
26 the Pool and reinsured or administered by a third-party administrator shall not be  
27 included in the count. The Board shall allow a reinsurer to exclude from its number of  
28 covered individuals those who have been counted by the primary insurer or by the  
29 primary reinsurer or primary excess or stop-loss insurer for the purposes of determining  
30 its assessment under this section.

31 (d) The Board may verify each insurer's assessment based on annual statements  
32 and other reports deemed to be necessary by the Board. The Board may use any  
33 reasonable method of estimating the number of covered individuals of an insurer if the  
34 specific number is unknown.

35 (e) If assessments and other receipts by the Pool, Board, or administering insurer  
36 exceed the actual losses and administrative expenses of the plan, the excess shall be  
37 held at interest and used by the Board to offset future losses or to reduce plan premiums.  
38 Future losses include reserves for claims incurred but not reported.

39 (f) The Commissioner may suspend or revoke, after notice and hearing, the  
40 certificate of authority to transact insurance in this State of any insurer that fails to pay  
41 an assessment. As an alternative, the Commissioner may levy a forfeiture on any insurer  
42 that fails to pay an assessment when due. The forfeiture may not exceed five percent  
43 (5%) of the unpaid assessment per month, but no forfeiture shall be less than one  
44 hundred dollars (\$100.00) per month.

1 **"§ 58-50-295. Complaint procedures.**

2 An applicant or participant in coverage from the Pool is entitled to have complaints  
3 against the Pool reviewed by a grievance committee appointed by the Board. Members  
4 of the Board shall not serve on the grievance committee. The grievance process shall  
5 comply with G.S. 58-50-62. The grievance committee shall report to the Board after  
6 completion of the review of each complaint. The Board shall retain all written  
7 complaints regarding the Pool at least until the third anniversary of the date the Pool  
8 received the complaint. An applicant or participant may file for external review of the  
9 applicant's grievance after having exhausted the Pool's internal grievance procedure.  
10 External review, including eligibility determinations, shall be conducted in accordance  
11 with Part 4 of this Article.

12 **"§ 58-50-300. Audit.**

13 An audit of the Pool shall be conducted annually under the oversight of the State  
14 Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Special  
15 Reserve for the North Carolina Health Insurance Risk Pool.

16 **"§ 58-50-305. Taxation.**

17 The Pool established under this Part is exempt from any and all taxes.

18 **"§ 58-50-310. Rules.**

19 The Commissioner may adopt rules, including temporary rules, to implement this  
20 Part.

21 **"§ 58-50-315. Collective action.**

22 The establishment of rates, forms, or procedures, and any other joint or collective  
23 action required by this Part may not be the basis of any legal action or criminal or civil  
24 liability or penalty against the Pool or any insurer."

25 **SECTION 1.2.** On or before January 1, 2007, the Department of Insurance  
26 shall notify the Centers for Medicare and Medicaid Services that the State has  
27 established the North Carolina Health Insurance Risk Pool and shall request that the  
28 North Carolina Health Insurance Risk Pool be approved as an acceptable "alternative  
29 mechanism" under the federal Health Insurance Portability and Accountability Act in  
30 accordance with 45 C.F.R. § 148.128(e).

31 **SECTION 1.3.** The Board of Directors of the North Carolina Health  
32 Insurance Risk Pool, as appointed under Section 1 of this act, shall monitor methods of  
33 financing the Pool to ensure a stable funding source and allow for its continued  
34 operation. This monitoring shall include supplementary sources of funding, such as  
35 funds obtained from public and private not-for-profit foundations, insurer assessments,  
36 or other appropriate and available State or non-State funds. The Board shall also review  
37 on a regular basis:

- 38 (1) The number of individuals in this State who are uninsured as of a date  
39 certain because of high-risk conditions.  
40 (2) The number of uninsured individuals who would qualify for coverage  
41 under the Pool based on G.S. 58-50-265 and its Plan of Operation.  
42 (3) The cost of coverage under each of the health insurance plans  
43 developed by the Board, including administrative costs.

1 (4) The extent to which assessments meet or exceed amounts necessary  
2 for coverage and Board operations.

3 (5) The status of a request by the State to the Centers for Medicare and  
4 Medicaid Services for approval of the North Carolina Health Insurance  
5 Risk Pool to be considered an acceptable "alternative mechanism"  
6 under the federal Health Insurance Portability and Accountability Act  
7 in accordance with 45 C.F.R. § 148.128(e).

8 The Board shall report its findings and recommendations to the General  
9 Assembly on March 1, 2007, and annually thereafter.

10 **SECTION 1.4.** The North Carolina Health Insurance Risk Pool  
11 Administrator shall study methods for encouraging healthy behaviors and report its  
12 findings to the Board of Directors of the Pool and to the General Assembly not later  
13 than one year after initial implementation of the Pool.

14 **SECTION 1.5.** The Board of Directors of the Pool shall apply for grant  
15 funds available from the federal government to help support the implementation and  
16 ongoing costs of operating a high-risk pool. If federal funds are available for purposes  
17 for which funds were appropriated in this act from the General Fund, such federal funds  
18 shall be used to reimburse the General Fund, to the maximum extent allowable, for  
19 amounts appropriated for this purpose.

20 **SECTION 1.6.** Notwithstanding G.S. 58-50-280(a), individuals enrolling in  
21 the North Carolina Health Insurance Risk Pool within six months of the date that  
22 enrollment into the Pool first begins shall be subject to a six-month preexisting  
23 condition waiting period.

24 **SECTION 2.1.** There is appropriated from the General Fund to the  
25 Department of Insurance the sum of seventy-eight thousand nine hundred nineteen  
26 dollars (\$78,919) for the 2006-2007 fiscal year. These funds shall be used to support  
27 one additional full-time position in the Department to carry out the Department's  
28 responsibilities under the North Carolina Health Insurance Risk Pool. It is the intent of  
29 the General Assembly that funding for this purpose shall become part of the  
30 continuation budget of the Department of Insurance.

31 **SECTION 2.2.** There is appropriated from the General Fund to the  
32 Department of Insurance the sum of one million dollars (\$1,000,000) for the 2006-2007  
33 fiscal year. These funds shall be placed in a Special Reserve for the North Carolina  
34 Health Insurance Risk Pool in the Department of Insurance and shall be allocated for the  
35 reasonable expenses of the Board in conducting its duties under Section 1 of this act that  
36 are incurred on or before July 1, 2008. The Special Reserve is subject to the Executive  
37 Budget Act, except that Article 3C of Chapter 143 of the General Statutes does not  
38 apply to G.S. 58-50-250(e).

39 **SECTION 3.** Sections 2.1 and 2.2 of this act become effective July 1, 2006.  
40 The remainder of this act is effective when it becomes law. Enrollment in the North  
41 Carolina Health Insurance Risk Pool shall commence no later than January 1, 2008.