

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE DRS85411-LNz-230B\* (3/29)**

Short Title: Establish High-Risk Pool. (Public)

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Sponsors: Senator Purcell.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK  
POOL AND TO APPROPRIATE FUNDS THEREFOR.

The General Assembly of North Carolina enacts:

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

"Part 7. North Carolina Health Insurance Risk Pool.

**"§ 58-50-245. Definitions.**

For the purposes of this Part:

- (1) "Administrator" means the Pool Administrator selected by the Board in accordance with this Part.
- (2) "Benefit plan" means coverage offered by the Pool to eligible individuals.
- (3) "Board" means the Board of Directors of the Pool.
- (4) "Covered person" means any individual resident of this State, excluding dependents, who is eligible to receive health benefits from any insurer.
- (5) "Church plan" has the meaning given that term under section 3(33) of the Employee Retirement Income Security Act of 1974.
- (6) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:
  - a. A group health plan.
  - b. Health insurance coverage.
  - c. Part A or Part B of Title XVIII of the Social Security Act. (Medicare)
  - d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.(Medicaid)

- 1 e. Chapter 55 of Title 10, United States Code.  
2 f. A medical care program of the Indian Health Service or of a  
3 tribal organization.  
4 g. A state health benefits risk pool.  
5 h. A health plan offered under Chapter 89 of Title 5, United States  
6 Code.  
7 i. A public health plan as defined in federal regulations.  
8 j. A health benefit plan under section 5(e) of the Peace Corps Act  
9 (22 U.S.C. § 2504(e)).

10 A period of creditable coverage shall not be counted, with respect  
11 to the enrollment of an individual who seeks coverage under this Part,  
12 if, after such period and before the enrollment date, the individual  
13 experiences a significant break in coverage.

14 (7) "Dependent" means a resident spouse or unmarried child under the age  
15 of 19 years, a child who is a full-time student under the age of 23 years  
16 and who is financially dependent upon the parent, a child who is over  
17 18 years of age and for whom a person may be obligated to pay child  
18 support, or a child of any age who is disabled and dependent upon the  
19 parent.

20 (8) "Family member" means a parent, grandparent, brother, sister, or child  
21 of a dependent residing with the insured.

22 (9) "Federally defined eligible individual" means an individual:

23 a. For whom, as of the date on which the individual seeks  
24 coverage under this Part, the aggregate of the periods of  
25 creditable coverage is 18 or more months;

26 b. Whose most recent prior creditable coverage was under a group  
27 health plan, governmental plan, church plan, or health insurance  
28 coverage offered in connection with such a plan;

29 c. Who is not eligible for coverage under a group health plan, Part  
30 A or Part B of Title XVIII of the Social Security Act  
31 (Medicare), or a State plan under Title XIX of the Act  
32 (Medicaid), or any successor program, and who does not have  
33 other health insurance coverage;

34 d. With respect to whom the most recent coverage within the  
35 period of aggregate creditable coverage was not terminated  
36 based on a factor relating to nonpayment of premiums or fraud;

37 e. Who, if offered the option of continuation coverage under a  
38 COBRA continuation provision or under a similar state  
39 program, elected this coverage; and

40 f. Who has exhausted continuation coverage under this provision  
41 or program, if the individual elected the continuation coverage  
42 described in sub-subdivision e. of this subdivision.

43 (10) "Governmental plan" has the meaning given under section 3(32) of the  
44 Employee Retirement Income Security Act of 1974 and any

1 governmental plan established or maintained for its employees by the  
2 government of the United States or by an agency or instrumentality of  
3 the government of the United States.

4 (11) "Group health plan" means an employee welfare benefit plan as  
5 defined in section 3(1) of the Employee Retirement Income Security  
6 Act of 1974 to the extent that the plan provides medical care, including  
7 items and services paid for as medical care to employees or their  
8 dependents, as defined under the terms of the plan directly or through  
9 insurance, reimbursement, or otherwise.

10 (12) "Health insurance coverage" means any hospital and medical expense  
11 incurred policy, nonprofit health care services contract, health  
12 maintenance organization subscriber contract, or any other health care  
13 plan or arrangement that pays for or furnishes medical or health care  
14 services whether by insurance or otherwise.

15 "Health insurance coverage" does not include one or more, or any  
16 combination of, the following:

17 a. Coverage only for accident or disability income insurance, or  
18 any combination thereof.

19 b. Coverage issued as a supplement to liability insurance.

20 c. Liability insurance, including general liability insurance and  
21 automobile liability insurance.

22 d. Workers' compensation or similar insurance.

23 e. Automobile medical payment insurance.

24 f. Credit-only insurance.

25 g. Coverage for on-site medical clinics.

26 h. Other similar insurance coverage, specified in federal  
27 regulations issued pursuant to P.L. 104-191, under which  
28 benefits for medical care are secondary or incidental to other  
29 insurance benefits.

30 i. Limited-scope dental or vision benefits.

31 j. Benefits for long-term care, nursing home care, home health  
32 care, community-based care, or any combination thereof.

33 k. Medicare supplemental health insurance as defined under  
34 section 1882(g)(1) of the Social Security Act.

35 l. Coverage supplemental to the coverage provided under Chapter  
36 55 of Title 10, United States Code (Civilian Health and Medical  
37 Program of the Uniformed Services – CHAMPUS).

38 m. Similar supplemental coverage provided to coverage under a  
39 group health plan.

40 (13) "Insurance arrangement" means a plan, program, contract, or other  
41 arrangement through which health care services are provided by an  
42 employer to its officers or employees, but does not include health care  
43 services covered through an insurer.

- 1           (14) "Insured" means an individual who is eligible to receive benefits from  
2 the Pool. The term "insured" includes dependents and family members,  
3 as applicable.
- 4           (15) "Insurer" means any entity that provides health insurance coverage in  
5 this State. For the purposes of this Part, insurer includes an insurance  
6 company, a hospital or medical service corporation, a health  
7 maintenance organization, a multiple employer welfare arrangement, a  
8 third-party administrator or claims processor, an administrative service  
9 organization, or any other nongovernmental entity providing a health  
10 benefit plan subject to State insurance regulation.
- 11          (16) "Medical care" means amounts paid for:
- 12           a. The diagnosis, cure, mitigation, treatment, or prevention of  
13 disease, or amounts paid for the purpose of affecting any  
14 structure or function of the body;
- 15           b. Transportation primarily for and essential to medical care  
16 referred to in sub-subdivision a. of this subdivision; and
- 17           c. Insurance covering medical care referred to in sub-subdivisions  
18 a. and b. of this subdivision.
- 19          (17) "Plan of operation" means the articles, bylaws, and operating rules and  
20 procedures adopted by the Board in accordance with this Part.
- 21          (18) "Pool" means the North Carolina Health Insurance Risk Pool.
- 22          (19) "Resident" means an individual who:
- 23           a. Has been legally domiciled in this State for a period of at least  
24 30 days, except that for a federally defined eligible individual,  
25 there shall not be a 30-day requirement;
- 26           b. Is legally domiciled in this State on the date of application to  
27 the Pool and who is eligible for enrollment in the Pool as a  
28 result of the Health Insurance Portability and Accountability  
29 Act of 1996; or
- 30           c. Is legally domiciled in this State on the date of application to  
31 the Pool and is eligible for the credit for health insurance costs  
32 under section 35 of the Internal Revenue Code of 1986.
- 33          (20) "Significant break in coverage" means a period of 63 consecutive days  
34 during all of which the individual does not have any creditable  
35 coverage, except that neither a waiting period nor an affiliation period  
36 is taken into account in determining a significant break in coverage.
- 37          (21) "Trade Adjustment Assistance Program" (TAA) means Title II of the  
38 Trade Act of 2002, P.L. 107-210.

39 **"§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

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

43       (b) Board of Directors Appointment; Membership. – The Board of Directors of  
44 the North Carolina Health Insurance Risk Pool shall consist of the Commissioner of

1 Insurance, who shall serve as an ex officio nonvoting member of the Board, and seven  
2 members appointed as follows:

3 (1) Two members of the general public who are not employed by or  
4 affiliated with an insurance company or plan, group hospital, or other  
5 health care provider, and can reasonably be expected to qualify for  
6 coverage in the Pool. Members of the general public include  
7 individuals whose only affiliation with health insurance or health care  
8 coverage is as a covered member. The two members of the general  
9 public shall be appointed by the General Assembly, as follows:

10 a. One member upon the recommendation of the President Pro  
11 Tempore of the Senate.

12 b. One member upon the recommendation of the Speaker of the  
13 House of Representatives.

14 (2) Five members appointed by the Commissioner of Insurance, as  
15 follows:

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

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

19 c. One who represents the medical provider community, as  
20 recommended by the North Carolina Medical Society.

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

23 (c) Board of Directors; Terms of Appointment; Vacancies; Compensation. – The  
24 initial Board members shall be appointed as follows: two of the members to serve a  
25 term of three years; three of the members to serve a term of one year; and two of the  
26 members to serve a term of two years. Subsequent Board members shall serve for terms  
27 of three years. A Board member's term shall continue until the member's successor is  
28 appointed. The Commissioner shall appoint a chair to serve for the initial two years of  
29 the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board  
30 members and shall serve for two-year terms. The Commission shall fill vacancies in  
31 membership and may remove members from the Board for cause. Board members shall  
32 not be compensated in their capacity as Board members but shall be reimbursed for  
33 reasonable expenses incurred in the necessary performance of their duties.

34 (d) Plan of Operation. – The Board shall submit to the Commissioner a Plan of  
35 Operation for the Pool and any amendments necessary or suitable to assure the fair,  
36 reasonable, and equitable administration of the Plan of Operation. The Plan of  
37 Operation shall become effective upon approval in writing by the Commissioner  
38 consistent with the date on which the coverage under this Part must be made available.  
39 If the Board fails to submit a suitable Plan of Operation within 180 days after the  
40 appointment of the Board of Directors, or at any time thereafter fails to submit suitable  
41 amendments to the Plan of Operation, the Commissioner shall adopt temporary rules  
42 necessary or advisable to effectuate the provisions of this section. The rules shall  
43 continue in force until modified by the Commissioner or superseded by a Plan of

1 Operation submitted by the Board and approved by the Commissioner. The Plan of  
2 Operation shall:

- 3 (1) Establish procedures for operation of the Pool.
- 4 (2) Establish procedures for selecting a Pool Administrator in accordance  
5 with G.S. 58-50-255.
- 6 (3) Establish procedures to create a fund for administrative expenses,  
7 which shall be managed by the Board.
- 8 (4) Establish procedures for the collection, handling, accounting, and  
9 auditing of assets, monies, and claims of the Pool and the Pool  
10 Administrator.
- 11 (5) Develop and implement a program to publicize the existence of the  
12 Pool, the eligibility requirements, and procedures for enrollment,  
13 availability of State premium subsidies, and to maintain public  
14 awareness of the Pool.
- 15 (6) Establish procedures under which applicants and participants may  
16 have grievances reviewed by a grievance committee appointed by the  
17 Board in accordance with G.S. 58-50-295.
- 18 (7) Establish procedures for identifying and confirming income levels of  
19 applicants for Pool coverage who are eligible to receive a State  
20 premium subsidy, if a State premium subsidy is available.
- 21 (8) Provide for other matters as may be necessary and proper for the  
22 execution of the Board's powers, duties, and obligations under this  
23 Part.

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

- 26 (1) Enter into contracts as are necessary or proper to carry out the  
27 provisions and purposes of this Part, including the authority, with the  
28 approval of the Commissioner, to enter into contracts with similar  
29 plans of other states for the joint performance of common  
30 administrative functions or with persons or other organizations for the  
31 performance of administrative functions.
- 32 (2) Sue or be sued, including taking any legal actions necessary or proper  
33 to recover or collect assessments due the Pool.
- 34 (3) Take legal action as necessary to:
  - 35 a. Avoid the payment of improper claims against the Pool or the  
36 coverage provided by or through the Plan.
  - 37 b. Recover any amounts erroneously or improperly paid by the  
38 Plan.
  - 39 c. Recover any amounts paid by the Pool as a result of mistake of  
40 fact or law.
  - 41 d. Recover other amounts due the Pool.
- 42 (4) Establish rates and rate schedules in accordance with this Part.
- 43 (5) Issue policies of insurance in accordance with the requirements of this  
44 Part.

- 1           (6) Appoint appropriate legal, actuarial, and other committees as  
2           necessary to provide technical assistance in the operation of the Pool,  
3           policy, and other contract design, and any other function within the  
4           Pool's authority.
- 5           (7) Borrow money to effect the purposes of the Pool. Any notes or other  
6           evidence of indebtedness of the Pool not in default are legal  
7           investments for insurers and may be carried as admitted assets.
- 8           (8) Establish policies, conditions, and procedures for reinsuring risks of  
9           participating insurers desiring to issue Pool coverage in their own  
10           name. Provision of reinsurance shall not subject the Pool to any of the  
11           capital or surplus requirements, if any, otherwise applicable to  
12           reinsurers.
- 13           (9) Employ and fix the compensation of employees.
- 14           (10) Prepare and distribute certificate of eligibility forms and enrollment  
15           instruction forms to insurance producers and to the general public.
- 16           (11) Provide for reinsurance of risks incurred by the Pool.
- 17           (12) Issue additional types of health insurance policies to provide optional  
18           coverage, including Medicare supplemental insurance coverage.
- 19           (13) Provide for and employ cost containment measures and requirements  
20           including preadmission screening, second surgical opinion, concurrent  
21           utilization review, disease management, individual case management,  
22           and other commonly used benefit plan design features for the purpose  
23           of making health insurance coverage offered by the Pool more  
24           cost-effective.
- 25           (14) Design, utilize, contract, or otherwise arrange for the delivery of  
26           cost-effective health care services, including establishing or  
27           contracting with preferred provider organizations, health maintenance  
28           organizations, and other limited network provider arrangements.
- 29           (15) Adopt bylaws, policies, and procedures as may be necessary or  
30           convenient for the implementation of this Part and the operation of the  
31           Pool.

32           (f) The Board shall operate the Pool in a manner so that the estimated cost of  
33           providing health insurance coverage during any fiscal year will not exceed the total  
34           income the Pool expects to receive from policy premiums and other revenue available to  
35           the Pool. The financing mechanisms recommended to and approved by the General  
36           Assembly shall provide for a means to adjust those mechanisms annually, or more  
37           frequently if necessary, in order to assure that the Pool has the financial capacity to  
38           insure the projected number of enrollees.

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

1       (h) Neither the Board nor its employees are liable for any obligations of the Pool.  
2 No current or former member or employee of the Board is liable, and no cause of action  
3 of any nature may arise against them, for any act or omission related to the performance  
4 of their powers and duties under this Part, unless such act or omission constitutes willful  
5 or wanton misconduct. The Board may provide in its bylaws or rules for  
6 indemnification of, and legal representation for, its members and employees.

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

9 **"§ 58-50-255. Administrator.**

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

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

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

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

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

20           (5) Financial condition and stability.

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

24       (b) The Administrator shall serve for a period specified in the contract between  
25 the Pool and the Administrator subject to removal for cause and subject to any terms,  
26 conditions, and limitations of the contract between the Pool and the Administrator. At  
27 least one year before the expiration of each period of service by an Administrator, the  
28 Board shall invite eligible entities, including the current Administrator, to submit bids to  
29 serve as the Administrator. Selection of the Administrator for the succeeding period  
30 shall be made at least six months before the end of the current period.

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

33           (1) Determination of eligibility.

34           (2) Payment of claims.

35           (3) Establishment of a premium billing procedure for collection of  
36 premiums from individuals covered under the Pool.

37           (4) Other necessary functions to assure timely payment of benefits to  
38 covered persons under the Pool.

39       (d) The Administrator shall submit regular reports to the Board regarding the  
40 operation of the Pool. The contract between the Board and the Administrator shall  
41 specify the frequency, content, and form of the report.

42       (e) Following the close of each calendar year, the Administrator shall determine  
43 net written and earned premiums, the expense of administration, and the paid and



1 incurred losses for the year and report this information to the Board and the  
2 Commissioner on a form prescribed by the Commissioner.

3 (f) The Administrator shall be paid as provided in the contract between the  
4 Board and the Administrator.

5 **"§ 58-50-260. Risk Pool rates.**

6 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate  
7 adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any  
8 other actuarial function appropriate to the operation of the Pool. Rates and rate  
9 schedules may be adjusted for appropriate factors such as age, sex, and geographic  
10 variation in claim cost and shall take into consideration appropriate factors in  
11 accordance with established actuarial and underwriting practices.

12 (b) The Pool shall determine the standard risk rate by considering the premium  
13 rates charged by other insurers offering health insurance coverage to individuals. The  
14 standard risk rate shall be established using reasonable actuarial techniques and shall  
15 reflect anticipated experience and expenses for the coverage. Pool rates shall be one  
16 hundred fifty percent (150%) of rates established as applicable for individual standard  
17 rates.

18 (c) The Pool shall provide for premium discounts for covered individuals who  
19 are nonsmokers or who are actively participating in a smoking cessation program.  
20 Approval of smoking cessation programs, criteria for active participation in smoking  
21 cessation programs, and discount rates shall be established by the Board, subject to the  
22 approval of the Commissioner.

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

25 (e) The Pool shall submit all rates and rate schedules to the Commissioner for  
26 approval, and the Commissioner must approve the rates and rate schedules before the  
27 Pool may use them. The Commissioner, in evaluating the rates and rate schedules, shall  
28 consider the factors provided in this section.

29 **"§ 58-50-265. Eligibility for Pool coverage.**

30 (a) Any individual who is and continues to be a resident of this State and a  
31 citizen of the United States is eligible for Pool coverage if evidence is provided of:

32 (1) A notice of rejection or refusal to issue substantially similar insurance  
33 for health reasons by two insurers. A rejection or refusal by an insurer  
34 offering only stop-loss, excess loss, or reinsurance coverage with  
35 respect to the applicant is not sufficient evidence of eligibility;

36 (2) Two offers to issue insurance only with conditional riders that limit  
37 coverage for the individual's high-risk medical condition;

38 (3) Refusal by two insurers to issue insurance except at a rate exceeding  
39 the Pool rate;

40 (4) Diagnosis of the individual with one of the medical or health  
41 conditions listed by the Board in accordance with this section. An  
42 individual diagnosed with one or more of these conditions is eligible  
43 for Pool coverage without applying for other health insurance  
44 coverage;

- 1           (5)    In the case of an individual who is eligible for coverage under the  
2           Health Insurance Portability and Accountability Act of 1996, the  
3           individual's maintenance of health insurance coverage, of which the  
4           most recent coverage was through an employer-sponsored plan, for the  
5           previous 18 months with no gap in coverage greater than 63 days and  
6           exhaustion of any available COBRA or State continuation benefits; or  
7           (6)    An individual who is legally domiciled in this State and is eligible for  
8           the credit for health insurance costs under the Trade Adjustment  
9           Assistance Reform Act of 2002, section 35 of the Internal Revenue  
10           Code of 1986.

11           (b)    The Board shall adopt a list of medical or health conditions for which a  
12           person shall be eligible for Pool coverage without applying for health insurance  
13           pursuant to subsection (a) of this section. Persons who can demonstrate the existence or  
14           history of any medical or health conditions on the list adopted by the Board shall not be  
15           required to provide the evidence specified in subsection (a) of this section. The Board  
16           may amend the list as the Board considers appropriate.

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

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

- 20           (1)    The individual has or obtains health insurance coverage substantially  
21           similar to or more comprehensive than a Pool policy, or would be  
22           eligible to have coverage if the person elected to obtain it, except that:  
23           a.     An individual may maintain other coverage for the period of  
24           time the individual is satisfying any preexisting condition  
25           waiting period under a Pool policy; and  
26           b.     An individual may maintain Pool coverage for the period of  
27           time the individual is satisfying a preexisting condition waiting  
28           period under another health insurance policy intended to replace  
29           the Pool policy.
- 30           (2)    The individual is determined to be eligible for enrollment in the State  
31           Medical Assistance Plan.
- 32           (3)    The individual has previously terminated Pool coverage unless 12  
33           months have lapsed since the termination, except that this subdivision  
34           shall not apply with respect to an applicant who is a federally defined  
35           eligible individual or to an applicant eligible for or receiving benefits  
36           under the Trade Adjustment Assistance Program.
- 37           (4)    The individual is an inmate or resident of a public institution, except  
38           that this subdivision shall not apply with respect to an applicant who is  
39           a federally defined eligible individual.
- 40           (5)    The individual's premiums are paid for or reimbursed under any  
41           government-sponsored program or by any government agency or  
42           health care provider, except as an otherwise qualifying full-time  
43           employee, or dependent thereof, of a government agency or health care  
44           provider. This subdivision shall not apply for individuals receiving

1 benefits under the Trade Adjustment Assistance Program or to  
2 individuals receiving premium subsidies made available by the State  
3 based on individual income levels.

4 (6) The individual has in effect on the date Pool coverage takes effect  
5 health insurance coverage from an insurer or insurance arrangement.

6 (e) Coverage under the Pool shall cease:

7 (1) On the date an individual is no longer a resident of this State.

8 (2) On the date an individual requests coverage to end.

9 (3) Upon the death of the covered individual.

10 (4) On the date State law requires cancellation of the Pool policy.

11 (5) At the option of the Pool, 30 days after the Pool makes any inquiry  
12 concerning the individual's eligibility or residence to which the  
13 individual does not reply.

14 (6) Because the individual has failed to make the payments required under  
15 this Part.

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

19 **"§ 58-50-270. Unfair referral to Pool.**

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

26 **"§ 58-50-275. Minimum Pool benefits.**

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

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

43 **"§ 58-50-280. Preexisting conditions.**

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

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

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

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

16 **"§ 58-50-285. Nonduplication of benefits.**

17       (a) The Pool shall be payor of last resort of benefits whenever any other benefit  
18 or source of third-party payment is available. Benefits otherwise payable under  
19 coverage shall be reduced by all amounts paid or payable through any other health  
20 insurance coverage and by all hospital and medical expense benefits paid or payable  
21 under any workers' compensation coverage, automobile medical payment, or liability  
22 insurance, whether provided on the basis of fault or no-fault, and by any hospital or  
23 medical benefits paid or payable under or provided pursuant to any State or federal law  
24 or program.

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

29 **"§ 58-50-290. Assessments.**

30       (a) For the purposes of providing the funds necessary to carry out the powers and  
31 duties of the Pool, the Board shall assess all insurers at such time and for such amounts  
32 as the Board finds necessary. Assessments shall be due in not less than 30 days after  
33 prior written notice to the member insurers and shall accrue interest at twelve percent  
34 (12%) per annum on and after the due date.

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

40       (c) The Board shall make reasonable efforts designed to ensure that each covered  
41 individual is counted only once with respect to any assessment. For that purpose, the  
42 Board shall require each insurer that obtains excess or stop-loss insurance to include in  
43 its count of covered individuals all individuals whose coverage is insured (including by  
44 way of excess or stop-loss coverage) in whole or in part. The Board shall allow a

1 reinsurer to exclude from its number of covered individuals those who have been  
2 counted by the primary insurer or by the primary reinsurer or primary excess or  
3 stop-loss insurer for the purposes of determining its assessment under this section.

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

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

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

18 **"§ 58-50-295. Complaint procedures.**

19 An applicant or participant in coverage from the Pool is entitled to have complaints  
20 against the Pool reviewed by a grievance committee appointed by the Board. Members  
21 of the Board shall not serve on the grievance committee. The grievance process shall  
22 comply with G.S. 58-50-62. The grievance committee shall report to the Board after  
23 completion of the review of each complaint. The Board shall retain all written  
24 complaints regarding the Pool at least until the third anniversary of the date the Pool  
25 received the complaint. An applicant or participant may file for external review of the  
26 applicant's grievance after having exhausted the Pool's internal grievance procedure.  
27 External review shall be conducted in accordance with Part 4 of this Article.

28 **"§ 58-50-300. Audit.**

29 The State Auditor shall conduct annually a special audit of the Pool. The State  
30 Auditor's report shall include a financial audit and an economic and efficiency audit.  
31 The State Auditor shall report the cost of each audit conducted under this Part to the  
32 Board and the Comptroller, and the Board shall remit that amount to the Comptroller for  
33 deposit to the General Fund.

34 **"§ 58-50-305. Taxation.**

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

36 **"§ 58-50-310. Rules.**

37 The Commissioner may adopt rules, including temporary rules, to implement this  
38 Part.

39 **"§ 58-50-315. Collective action.**

40 The participation in the Pool as participating insurers, the establishment of rates,  
41 forms, or procedures, and any other joint or collective action required by this Part may  
42 not be the basis of any legal action or criminal or civil liability or penalty against the  
43 Pool or any participating insurer."

1           **SECTION 1.2.** The Board of Directors of the North Carolina Health  
2 Insurance Risk Pool, as appointed under Section 1 of this act, shall monitor methods of  
3 financing the Pool to ensure a stable funding source and allow for its continued  
4 operation. This monitoring shall include supplementary sources of funding, such as  
5 funds obtained from public and private not-for-profit foundations, or other appropriate  
6 and available State or non-State funds. The Board shall also review on a regular basis:

7           (1) The number of individuals in this State who are uninsured as of a date  
8           certain because of high-risk conditions.

9           (2) The number of uninsured individuals who would qualify for coverage  
10           under the Pool based on G.S. 58-50-265 and its Plan of Operation.

11           (3) The cost of coverage under each of the health insurance plans  
12           developed by the Board, including administrative costs.

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

15           **SECTION 1.3.** The North Carolina Health Insurance Risk Pool  
16 Administrator shall study methods for encouraging healthy behaviors and report its  
17 findings to the Board of Directors of the Pool and to the General Assembly not later  
18 than one year after initial implementation of the Pool.

19           **SECTION 1.4.** The Board of Directors of the Pool shall apply for grant  
20 funds available from the federal government to help support the implementation and  
21 ongoing costs of operating a high-risk pool. If federal funds are available for purposes  
22 for which funds were appropriated in this act from the General Fund, such federal funds  
23 shall be used to reimburse the General Fund, to the maximum extent allowable, for  
24 amounts appropriated for this purpose.

25           **SECTION 2.** G.S. 58-6-25(d) is amended by adding the following new  
26 subdivision to read:

27           ...

28           "(d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State  
29 treasury, under the control of the Office of State Budget and Management. The proceeds  
30 of the charge levied in this section and all fees collected under Articles 69 through 71 of  
31 this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be  
32 credited to the Fund. The Fund shall be placed in an interest-bearing account and any  
33 interest or other income derived from the Fund shall be credited to the Fund. Moneys in  
34 the Fund may be spent only pursuant to appropriation by the General Assembly and in  
35 accordance with the line item budget enacted by the General Assembly. The Fund is  
36 subject to the provisions of the Executive Budget Act, except that no unexpended  
37 surplus of the Fund shall revert to the General Fund. All money credited to the Fund  
38 shall be used to reimburse the General Fund for the following:

39           ...

40           (6) Money appropriated to the Department of Insurance for the Special  
41           Reserve for the North Carolina Health Insurance Risk Pool."

42           **SECTION 3.1.** There is appropriated from the General Fund to the  
43 Department of Insurance the sum of \$ for the 2006-2007 fiscal year. These funds shall

1 be used to support # additional full-time positions in the Department to carry out the  
2 Department's responsibilities under the North Carolina Health Insurance Risk Pool.

3 **SECTION 3.2.** There is appropriated from the General Fund to the  
4 Department of Insurance the sum of two hundred thousand dollars (\$200,000) for the  
5 2006-2007 fiscal year. These funds shall be placed in a Special Reserve for the North  
6 Carolina Health Insurance Risk Pool in the Department of Insurance and shall be  
7 allocated for the reasonable expenses of the Board in conducting its duties under  
8 Section 1 of this act. The North Carolina Health Insurance Risk Pool shall not offer or  
9 provide coverage under Section 1 of this act until the effective date of an act of the  
10 General Assembly that establishes or approves a method or methods for financing the  
11 Pool as specified in this act.

12 **SECTION 3.3.** There is appropriated to the Special Reserve for the North  
13 Carolina Health Insurance Risk Pool the sum of \$ for the 2006-2007 fiscal year. These  
14 funds shall be used to provide a premium subsidy on a sliding scale basis for individuals  
15 with incomes up to three hundred percent (300%) of the federal poverty guidelines who  
16 are participating in the North Carolina Health Insurance Risk Pool. The subsidy shall  
17 pay for ninety-five percent (95%) of the premium costs for individuals with incomes  
18 below one hundred percent (100%) of the federal poverty guidelines, to be phased out  
19 when a family's income reaches three hundred percent (300%) of the federal poverty  
20 guidelines, and will be based on the lowest cost plan offered through the High-Risk  
21 Pool. Individuals who are eligible for a federal premium subsidy under the Trade  
22 Adjustment Act (TAA) must apply for premium subsidy under that Act. The amount of  
23 the State premium subsidy, if any, shall be reduced by any federal premium subsidy  
24 provided. Funds appropriated under this section shall not revert to the General Fund but  
25 shall remain in the Special Reserve for the purposes specified in this section.

26 **SECTION 4.** Sections 3.1, 3.2, and 3.3 of this act become effective July 1,  
27 2006. The remainder of this act is effective when it becomes law. Enrollment in the  
28 North Carolina Health Insurance Risk Pool shall commence no earlier than January 1,  
29 2007.