

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS15072-RG-5 (03/08)

Short Title: Insurance Amendments.-AB

(Public)

Sponsors: Senator Apodaca.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE INSURANCE LAWS TO PRIVATIZE ONLINE AND ADMINISTRATIVE PROCESSES FOR LICENSE APPLICANTS, ENSURE ACCURACY IN CERTIFICATES OF INSURANCE, REQUIRE PRIOR APPROVAL OF SMALL GROUP HEALTH INSURANCE RATES AND ENCOURAGE THE SALE OF CHILD-ONLY HEALTH INSURANCE POLICIES, AMEND THE RISK-BASED CAPITAL LAW TO MAINTAIN NAIC ACCREDITATION, PROVIDE AN EXEMPTION FOR LICENSING OF CLAIMS INPUT EMPLOYEES FOR PORTABLE ELECTRONIC DEVICES, PROHIBIT FEDERAL PREEMPTION OF CROP ADJUSTERS' REGULATION, AND EASE THE REGULATORY BURDEN ON THE ASSOCIATION AGGREGATE SECURITY SYSTEM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-2-69(g) reads as rewritten:

"(g) The Commissioner may contract with the NAIC or other persons for the provision of online services to applicants and licensees, for the provision of administrative ~~services to licensees, or services, for the provision of license processing and support services, and~~ for the provision of regulatory data systems to the Commissioner. The NAIC or other person with whom the Commissioner contracts may charge applicants and licensees a reasonable fee for ~~the costs associated with the licensees' use the provision of online services and services, the provision of administrative services, the provision of license processing and support services, and the provision of regulatory data systems to the Commissioner.~~ The fee shall be agreed to by the Commissioner and the other contracting party and shall be stated in the contract. The fee is in addition to any applicable license application and renewal fees. Contracts for the provision of online services, contracts for the provision of administrative services, and contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."



1           **SECTION 2.** G.S. 58-3-150 reads as rewritten:

2   "**§ 58-3-150. Forms to be approved by Commissioner.**

3       (a) It is unlawful for any insurance company licensed and admitted to do business in  
4 this State to issue, sell, or dispose of any policy, contract, ~~or~~ certificate, or certificate of  
5 insurance or use applications in connection therewith, until the forms of the same have been  
6 submitted to and approved by the Commissioner, and copies filed in the Department. If a policy  
7 form filing is disapproved by the Commissioner, the Commissioner may return the filing to the  
8 filer. As used in this section, "policy form" includes endorsements, riders, or amendments to  
9 policies that have already been approved by the Commissioner.

10       (b) With respect to group and blanket accident and health insurance, group life  
11 insurance, and group annuity policies issued and delivered to a trust or to an association outside  
12 of this State and covering persons resident in this State, the group certificates to be delivered or  
13 issued for delivery in this State shall be filed with and approved by the Commissioner pursuant  
14 to subsection (a) of this section.

15       (c) If not submitted electronically, all contracts, literature, advertising materials, letters,  
16 and other documents submitted to the Department to comply with the filing requirements of  
17 this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on  
18 paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled  
19 or bound.

20       (d) A certificate of insurance is not a policy of insurance and does not amend, extend,  
21 or alter the coverage afforded by the policy to which the certificate of insurance makes  
22 reference. A certificate of insurance shall not confer to a certificate holder new or additional  
23 rights beyond what the referenced policy of insurance expressly provides.

24       (e) It is unlawful for any person to knowingly prepare, issue, request, or require a  
25 certificate of insurance that meets any of the following criteria:

26           (1) Has not been filed with and approved by the Commissioner.

27           (2) Contains any false or misleading information concerning the policy of  
28 insurance to which the certificate makes reference.

29           (3) Purports to alter, amend, or extend the coverage provided by the policy of  
30 insurance to which the certificate makes reference.

31       (f) As used in this section, "certificate of insurance" means a document prepared or  
32 issued by an insurance company or producer that is used to verify or evidence the existence of  
33 property or casualty insurance coverage. "Certificate of insurance" shall not include a policy of  
34 insurance or insurance binder.

35       (g) A certificate holder shall only have a legal right to notice of cancellation,  
36 nonrenewal, or any material change, or any similar notice concerning a policy of insurance if  
37 the certificate holder is named within the policy or any endorsement and the policy or  
38 endorsement requires notice to be provided to the certificate holder. The terms and conditions  
39 of the notice, including the required timing of the notice, are governed by the policy of  
40 insurance and cannot be altered by a certificate of insurance."

41           **SECTION 3.** Article 50 of Chapter 58 is amended by adding the following new  
42 section to read:

43   "**§ 58-50-131. Premiums for health benefit plans; approval authority; hearing.**

44       (a) No schedule of premiums for coverage for a health benefit plan subject to this act,  
45 or any amendment to the schedule, shall be used in conjunction with any such health benefit  
46 plan until a copy of the schedule of premiums or amendment has been filed with and approved  
47 by the Commissioner. Any schedule of premiums or amendment filed under this section shall  
48 be established in accordance with G.S. 58-50-130(b). The schedule of premiums shall not be  
49 excessive, inadequate, or unfairly discriminatory, and shall exhibit a reasonable relationship to  
50 the benefits provided by the contract of insurance. Each filing shall include a certification by an  
51 individual who is a member in good standing with the Society of Actuaries.

1       (b) The Commissioner shall approve or disapprove a schedule of premium rates within  
2 60 days of receipt of a complete filing. It shall be unlawful to use a schedule of premiums until  
3 approved. If the Commissioner disapproves the filing, the Commissioner shall notify the filer,  
4 shall specify the reasons for disapproval, and shall provide an opportunity for refiling and for  
5 requesting a hearing. A hearing shall be granted within a reasonable period from the date the  
6 request is submitted to the Commissioner in writing by the person filing.

7       (c) The Commissioner shall adopt rules as necessary or proper (i) to prevent the federal  
8 preemption of health insurance regulation in the State and (ii) to implement the provisions of  
9 this section and (iii) to establish minimum standards for loss ratios of policies subject to this  
10 section on the basis of incurred claims experience and earned premium in accordance with  
11 accepted actuarial principles and practices to assure that the benefits are reasonable in relation  
12 to the premium charged. The Commissioner shall adopt rules to require the submission of  
13 supporting data and any information that the Commissioner considers necessary or proper to  
14 determine whether the filed schedule of premiums meets the standards set forth in this section."

15       **SECTION 4.** Article 3 of Chapter 58 of the General Statutes is amended by adding  
16 the following new section to read:

17 **"§ 58-3-285. Nondependent child coverage defined; open enrollment.**

18       (a) As used in this section, the following definitions apply:

19       (1) "Nondependent child coverage" or "nondependent child policy" means an  
20 individual health benefit plan which provides coverage to an individual  
21 under age 19. This shall not include health benefit plans that cover children  
22 under age 19 as a dependent.

23       (2) "Health benefit plan" has the same meaning as G.S. 58-3-167(a)(1).

24       (3) "Individual market" has the same meaning as G.S. 58-68-25(a)(9).

25       (4) "Insurer" has the same meaning as G.S. 58-3-167(a)(2).

26       (5) "Open enrollment" means, with respect to "nondependent child coverage,"  
27 the period of time during which any individual under age 19 has the  
28 opportunity to apply for coverage under a health benefit plan offered by an  
29 insurer and shall not be denied eligibility for coverage under the plan due to  
30 factors relating to the individual's health status.

31       (b) An insurer who offers nondependent child coverage shall offer open enrollment  
32 either continuously throughout the year or for the months of January and July of each year.  
33 Coverage issued under this section shall be issued without any riders based on the health status  
34 of the child. Nothing in this section shall require an insurer to offer nondependent child  
35 coverage.

36       (c) The Commissioner shall adopt rules as necessary or proper to implement the  
37 provisions of this section.

38       (d) Nothing in this section shall prohibit an insurer from adjusting the initial premium  
39 charged an individual afforded coverage under this section based upon medical underwriting to  
40 the extent that such an adjustment is in compliance with the applicable product's current rate  
41 filing approved by the Commissioner."

42       **SECTION 5.** G.S. 58-12-2 reads as rewritten:

43 **"§ 58-12-2. Definitions.**

44       As used in this Article, the following terms have the following meanings:

45       (1) Adjusted risk-based capital report. – A risk-based capital report that has been  
46 adjusted by the Commissioner under G.S. 58-12-6.

47       (2) Corrective order. – An order issued by the Commissioner specifying  
48 corrective actions that the Commissioner has determined are required.

49       (3) Domestic insurer. – Any insurance company or health organization  
50 organized in this State under ~~Article 7,~~ Article 7 of this Chapter as specified

- 1            in subdivisions (4b) and (5a) of this section, or under Article 15, 65, or 67  
2            of this Chapter.
- 3            (4) Foreign insurer. – Any insurance company or health organization that is  
4            admitted to do business in this State under Article 16 or 67 of this Chapter  
5            but is not domiciled in this State.
- 6            (4a) Health organization. – Any insurer which is required by the Commissioner  
7            to use the NAIC Health Annual Statement Blank when filing the annual  
8            statement prescribed by G.S. 58-2-165 or any health maintenance  
9            organization, limited health service organization, dental or vision plan,  
10           hospital, medical, or dental indemnity or service corporation, or other  
11           organization licensed under Article 65 or 67 of this Chapter. "Health  
12           organization" does not include an insurer that is licensed as either a life or  
13           health insurer or a property or casualty insurer under this Chapter and that is  
14           otherwise subject to either the life or property and casualty risk-based capital  
15           requirements.
- 16           (4b) Life or health insurer. – Any insurance company licensed to write the kinds  
17           of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property  
18           and casualty insurer writing only the kinds of insurance specified in  
19           G.S. 58-7-15(3). "Life or health insurer" does not mean any insurer that is  
20           required by the Commissioner to sue the NAIC Health Annual Statement  
21           Blank when it files the annual statement prescribed by G.S. 58-2-165.
- 22           (5) Negative trend. – A negative trend, with respect to a life or health insurer,  
23           over a period of time, as determined in accordance with the "trend test  
24           calculation" included in the risk-based capital instructions.
- 25           (5a) Property or casualty insurer. – Any insurance company licensed to write the  
26           kinds of insurance specified in G.S. 58-7-15(4) through (22); but not  
27           monoline mortgage guaranty insurers, financial guaranty insurers, or title  
28           ~~insurers.~~ insurers; nor any insurer that is required by the Commissioner to use  
29           the NAIC Health Annual Statement Blank when filing the annual statement  
30           prescribed by G.S. 58-2-165.
- 31           (6) Risk-based capital instructions. – The risk-based capital report including  
32           risk-based capital instructions adopted by the NAIC, as those risk-based  
33           capital instructions may be amended by the NAIC from time to time in  
34           accordance with the procedures adopted by the NAIC.
- 35           (7) Risk-based capital level. – An insurer's company action level risk-based  
36           capital, regulatory action level risk-based capital, authorized control level  
37           risk-based capital, or mandatory control level risk-based capital where:  
38           a.        "Company action level risk-based capital" means, with respect to any  
39           insurer, the product of 2.0 and its authorized control level risk-based  
40           capital.  
41           b.        "Regulatory action level risk-based capital" means the product of 1.5  
42           and its authorized control level risk-based capital.  
43           c.        "Authorized control level risk-based capital" means the number  
44           determined under the risk-based capital formula in accordance with  
45           the risk-based capital instructions.  
46           d.        "Mandatory control level risk-based capital" means the product of  
47           .70 and the authorized control level risk-based capital.
- 48           (8) Risk-based capital plan. – A comprehensive financial plan containing the  
49           elements specified in G.S. 58-12-11(b). If the Commissioner rejects the  
50           risk-based capital plan, and it is revised by the insurer, with or without the

1 Commissioner's recommendation, the plan shall be called the "revised  
2 risk-based capital plan".

3 (9) Risk-based capital report. – The report required in G.S. 58-12-6.

4 (10) Total adjusted capital. – The sum of:

5 a. An insurer's statutory capital and surplus, as determined in  
6 accordance with the statutory accounting applicable to the annual  
7 financial statements required under G.S. 58-2-165; and

8 b. Such other items, if any, as the risk-based capital instructions may  
9 provide."

10 **SECTION 6.** G.S. 58-12-11(a) reads as rewritten:

11 "(a) "Company action level event" means any of the following events:

12 (1) The filing of a risk-based capital report by an insurer that indicates that:

13 a. The insurer's total adjusted capital is greater than or equal to its  
14 regulatory action level risk-based capital but less than its company  
15 action level risk-based capital, ~~if the insurer is a property or casualty~~  
16 ~~insurer or a health organization; capital; or~~

17 b. ~~The~~ In the case of a life or health insurer, the insurer has total  
18 adjusted capital that is greater than or equal to its company action  
19 level risk-based capital but less than the product of its authorized  
20 control level risk-based capital and 2.5 and has a negative trend, if  
21 the insurer is a life or health insurer; trend; or

22 c. In the case of a property or casualty insurer or a health organization,  
23 the insurer has total adjusted capital that is greater than or equal to its  
24 company action level risk-based capital but less than the product of  
25 its authorized control level risk-based capital and 3.0 and triggers the  
26 trend test determined in accordance with the trend test calculation  
27 included in the property and casualty or health organization  
28 risk-based capital instructions.

29 (2) The notification by the Commissioner to the insurer of an adjusted ~~risk-based~~  
30 risk-based capital report that indicates the event in sub-subdivision ~~(1)a. or~~  
31 ~~b.(1)a., (1)b., or (1)c.~~ of this subsection if the insurer does not challenge the  
32 adjusted risk-based capital report under G.S. 58-12-30.

33 (3) If the insurer challenges an adjusted risk-based capital report that indicates  
34 the event in sub-subdivision ~~(1)a. or b.~~ (1)a., (1)b., or (1)c. of this subsection  
35 under G.S. 58-12-30, the notification by the Commissioner to the insurer that  
36 the Commissioner has rejected the insurer's challenge."

37 **SECTION 7.** Article 33 of Chapter 58 of the General Statutes is amended by  
38 adding a new section to read:

39 **"§ 58-33-27. Claims handling; insurance on portable consumer electronic devices.**

40 (a) As used in this section, the following definitions apply:

41 (1) "Automated claims adjudication system" means a preprogrammed computer  
42 system designed for the collection, data entry, calculation, and system  
43 generated final resolution of claims on insurance policies that cover portable  
44 consumer electronic devices, which system shall meet the following criteria:

45 a. Be utilized only by a licensed adjuster or licensed producer or  
46 supervised individuals operating pursuant to this section.

47 b. Comply with all claims payment requirements of this Chapter.

48 c. Be certified as compliant with this section by a licensed adjuster who  
49 is an officer of a licensed business entity under this Chapter.

50 (2) "Portable consumer electronic devices" include the following, which must be  
51 easily carried or conveyed by hand: smartphones, navigation devices,

1 cellular phones, personal digital assistants, iPads, iPhones, Androids, video  
2 games, wireless reading devices, laptops, tablets, netbooks, MP3 players,  
3 digital cameras and other electronic devices that are portable in nature, their  
4 accessories, and services related to the use of the device.

5 (b) No adjuster license is required for an individual who, in connection with insurance  
6 on portable consumer electronic devices, collects claim information from or furnishes claim  
7 information to insureds or claimants, who conducts data entry, including entering data into an  
8 automated claims adjudication system, and who does not exercise any discretion in the  
9 disposition of the claim; provided that the individual is an employee of a licensee under this  
10 Chapter or an employee of a licensee under this Chapter, if there are no more than 25  
11 individuals under the supervision of a licensed individual adjuster or a licensed individual  
12 producer who may adjust claims in accordance with G.S. 58-33-70(b). A producer who is  
13 acting as a supervisor pursuant to this section is not required to be licensed as an adjuster."

14 **SECTION 8.** G.S. 58-33-30(e) reads as rewritten:

15 "(e) Examination.

- 16 (1) After completion and filing of the application with the Commissioner, the  
17 Commissioner shall require each applicant for license as an agent or an  
18 adjuster to take an examination as to the applicant's competence to be  
19 licensed. The applicant must take and pass the examination according to  
20 requirements prescribed by the Commissioner. This subsection shall not  
21 apply to adjusters who adjust only federal crop insurance claims and are  
22 certified in accordance with subsection (2a) of this section.
- 23 (2) The Commissioner may require any licensed agent, adjuster, or motor  
24 vehicle damage appraiser to take and successfully pass an examination in  
25 writing, testing his competence and qualifications as a condition to the  
26 continuance or renewal of his license, if the licensee has been found guilty of  
27 any violation of any provision of this Chapter. If an individual fails to pass  
28 such an examination, the Commissioner shall revoke all licenses issued in  
29 his name and no license shall be issued until such individual has passed an  
30 examination as provided in this Article.
- 31 (2a) Adjusters who adjust federal crop insurance claims shall be certified as  
32 having passed a proficiency examination approved by the federal Risk  
33 Management Agency (RMA) as a condition of obtaining an adjuster's license  
34 under this Chapter, or another proficiency examination approved by the  
35 Commissioner. An adjuster who intends to adjust crop insurance claims shall  
36 furnish the Commissioner proof that the adjuster is certified as having  
37 passed the required examination pursuant to this section.
- 38 (3) Each examination shall be as the Commissioner prescribes and shall be of  
39 sufficient scope to test the applicant's knowledge of:  
40 a. The terms and provisions of the policies or contracts of insurance the  
41 applicant proposes to effect; or  
42 b. The types of claims or losses the applicant proposes to adjust; and  
43 c. The duties and responsibilities of the license; and  
44 d. The current laws of this State applicable to the license.
- 45 (4) The answers of the applicant to the examination shall be provided by the  
46 applicant under the Commissioner's supervision. The Commissioner shall  
47 give examinations at such times and places within this State as the  
48 Commissioner considers necessary reasonably to serve the convenience of  
49 both the Commissioner and applicants: Provided that the Commissioner may  
50 contract directly with persons for the processing of examination application  
51 forms and for the administration and grading of the examinations required

1 by this section; the Commissioner may charge a reasonable fee in addition to  
2 the registration fee charged under G.S. 58-33-125, to offset the cost of the  
3 examination contract authorized by this subsection; and such contracts shall  
4 not be subject to Article 3 of Chapter 143 of the General Statutes. However,  
5 the Commissioner shall: (i) submit all proposed statewide and agency term  
6 agreements or contracts for supplies, materials, printing, equipment, and  
7 contractual services that exceed one million dollars (\$1,000,000) authorized  
8 by this subdivision to the Attorney General or the Attorney General's  
9 designee for review as provided in G.S. 114-8.3; and (ii) include in all  
10 contracts to be awarded by the Commissioner under this subdivision a  
11 standard clause which provides that the State Auditor and internal auditors  
12 of the Commissioner may audit the records of the contractor during the term  
13 of the contract to verify accounts and data affecting fees and performance.  
14 The Commissioner shall not award a cost plus percentage of cost contract for  
15 any purpose.

16 (5) The Commissioner shall collect in advance the examination and registration  
17 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The  
18 Commissioner shall make or cause to be made available to all applicants, for  
19 a reasonable fee to offset the costs of production, materials that he considers  
20 necessary for the applicants' proper preparation for examinations. The  
21 Commissioner may contract directly with publishers and other suppliers for  
22 the production of the preparatory materials, and contracts so let by the  
23 Commissioner shall not be subject to Article 3 of Chapter 143 of the General  
24 Statutes. However, the Commissioner shall: (i) submit all proposed  
25 statewide and agency term contracts for supplies, materials, printing,  
26 equipment, and contractual services that exceed one million dollars  
27 (\$1,000,000) authorized by this subdivision to the Attorney General or the  
28 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)  
29 include in all contracts to be awarded by the Commissioner under this  
30 subdivision a standard clause which provides that the State Auditor and  
31 internal auditors of the Commissioner may audit the records of the  
32 contractor during the term of the contract to verify accounts and data  
33 affecting fees and performance. The Commissioner shall not award a cost  
34 plus percentage of cost contract for any purpose.

35 (6) In addition to the examinations for the kinds of insurance specified in  
36 G.S. 58-33-25(c)(1) and (2), before any resident may sell Medicare  
37 supplement or long-term care insurance policies defined respectively in  
38 Articles 54 and 55 of this Chapter, the resident must take and pass a  
39 supplemental written examination according to requirements prescribed by  
40 the Commissioner.

41 (7) An individual who fails to appear for the examination as scheduled or fails  
42 to pass the examination shall reapply for an examination and remit all  
43 required fees and forms before being rescheduled for another examination."

44 **SECTION 9.** G.S. 97-132 reads as rewritten:

45 **"§ 97-132. Board of directors.**

46 The Board shall consist of not less than nine directors serving terms as established in the  
47 Plan. The directors shall be selected by the members of the Association, ~~subject to the approval~~  
48 ~~of the Commissioner, Association~~ and shall serve for three-year terms and until a successor is  
49 elected and qualified. There is no limitation on the number of terms a director may serve. ~~In~~  
50 ~~approving selections to the Board, the Commissioner shall consider, among other things,~~

1 whether individual self-insurers and group self-insurers are fairly represented. Directors may be  
2 reimbursed from the assets of the Association for expenses incurred by them as directors."

3 **SECTION 10.** G.S. 97-133 reads as rewritten:

4 "**§ 97-133. Powers and duties of the Association.**

5 (a) The Association shall:

6 (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.

7 (1a) Administer a fund, to be known as the North Carolina Self-Insurance  
8 Security Fund, which shall receive the assets of the North Carolina  
9 Self-Insurance Guaranty Fund previously established under subdivision (2)  
10 of this subsection, the assessments required by subdivisions (2a) and (3a) of  
11 this subsection and any other sums received by the Association. ~~In its~~  
12 ~~discretion, the Board may determine that the assets of the Fund should be~~  
13 ~~segregated or that a separate accounting shall be made in order to identify~~  
14 ~~that portion of the Fund which represents assessments paid by individual~~  
15 ~~self-insurers and that portion of the Fund which represents assessments paid~~  
16 ~~by group self-insurers. If the Board segregates the Fund in this manner, the~~  
17 ~~Association shall thereafter pay covered claims against individual member~~  
18 ~~self-insurers from that portion of the Fund that represents assessments~~  
19 ~~against individual self-insurers and shall thereafter pay covered claims~~  
20 ~~against group member self-insurers from that portion of the Fund that~~  
21 ~~represents assessments against group self-insurers.—The costs of~~  
22 ~~administering the Association shall be borne by the Fund. The Association is~~  
23 ~~authorized to secure insurance, primary excess insurance, reinsurance,~~  
24 ~~bonds, other insurance, financial guarantees and related financial instruments~~  
25 ~~to effectuate the purposes of the Association. The Board will invest the Fund~~  
26 ~~assets pursuant to an investment policy adopted by the Board and reviewed~~  
27 ~~and approved annually by the Department of the State Treasurer. The~~  
28 ~~earnings from investment of Fund assets shall be placed in or credited to the~~  
29 ~~Fund.~~

30 (2) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

31 (2a) ~~Establish, operate, and maintain~~ Establish and operate the Association  
32 Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as  
33 follows:

34 a. ~~The Association shall annually prepare and submit to the~~  
35 ~~Commissioner a written plan to provide an Association Aggregate~~  
36 ~~Security System through a combination of cash on deposit in the~~  
37 ~~Fund, securities, surety bonds, irrevocable letters of credit, insurance~~  
38 ~~insurance, reinsurance, or other financial instruments or guarantees~~  
39 ~~owned or entered into by the Association and acceptable to the~~  
40 ~~Commissioner. Association. The written plan shall include, but not be~~  
41 ~~limited to, (i) a description of the institutions that will issue or~~  
42 ~~guarantee the securities, surety bonds, irrevocable letters of credit,~~  
43 ~~insurance or other financial instruments or guarantees, including, but~~  
44 ~~not limited to, the credit rating, financial strength, and AM best~~  
45 ~~rating, if applicable to the institutions (ii) applicable cash flow~~  
46 ~~information and financial assumptions (iii) a description of the~~  
47 ~~methodology to be used by the Association to assess and collect the~~  
48 ~~Association Aggregate Security System assessments to be made~~  
49 ~~pursuant to subdivision (3a) of this subsection and (iv) a proposed~~  
50 ~~timetable for the release of existing individual company deposits~~  
51 ~~posted pursuant to G.S. 97-185(c), provided, however, that no~~



- 1 individual company deposits posted pursuant to G.S. 97-185(c) shall  
2 be released without the written consent of the Commissioner. The  
3 noncash elements of the composite security may be one year or  
4 multiple year instruments.
- 5 b. ~~Within 90 days following the submission of the initial plan under~~  
6 ~~sub-subdivision a. of this subdivision, the Commissioner shall either~~  
7 ~~approve or disapprove the initial plan and shall notify the Association~~  
8 ~~in writing. If the Commissioner does not approve or disapprove the~~  
9 ~~initial plan within 90 days following submission, then the initial plan~~  
10 ~~shall be deemed to be approved by the Commissioner. All~~  
11 ~~subsequent plans shall be either approved or disapproved within 60~~  
12 ~~days following submission.~~
- 13 e. ~~The Commissioner shall also determine the total undiscounted claims~~  
14 ~~liability of each individual self-insurer that will participate in the~~  
15 ~~Association Aggregate Security System as well as the aggregate total~~  
16 ~~undiscounted outstanding claims liabilities of all the individual~~  
17 ~~self-insurers that are to participate in the Association Aggregate~~  
18 ~~Security System and shall notify the Association of this~~  
19 ~~determination.~~
- 20 d. ~~Upon approval by the Commissioner of the Association's plan for the~~  
21 ~~Association Aggregate Security System, the The Association shall~~  
22 ~~assess the individual self-insurers that participate in the Association~~  
23 ~~Aggregate Security System pursuant to subdivision (3a) of this~~  
24 ~~subsection.~~
- 25 e. ~~If the Commissioner disapproves the plan for any year, If the~~  
26 ~~Association determines it is not feasible or practical to continue the~~  
27 ~~Association Aggregate Security System, it shall notify the~~  
28 ~~Commissioner at least 90 days prior to the termination of the~~  
29 ~~Association Aggregate Security System. every Every self-insurer~~  
30 ~~shall deposit with the Commissioner, or continue to deposit, the~~  
31 ~~amount required by G.S. 97-185(b3) in the manner prescribed by~~  
32 ~~G.S. 97-185(c).~~
- 33 f. Group self-insurers shall not participate in the Association Aggregate  
34 Security System.
- 35 (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 36 (3a) Assess members of the Association as follows:
- 37 a. Association Aggregate Security System assessments. – The  
38 Association shall assess each individual self-insurer participating in  
39 the Association Aggregate Security System a security system  
40 assessment. The amount of the security system assessment charged to  
41 each individual self-insurer participating in the Association  
42 Aggregate Security System shall be based on the Association's  
43 reasonable consideration of all of the following factors:
- 44 1. The total amount of assessments necessary to provide  
45 aggregate security for all participating individual  
46 self-insurers.
  - 47 2. The individual self-insurer's total workers' compensation  
48 liabilities under the Act.
  - 49 3. The financial strength and creditworthiness of the  
50 participating individual self-insurer.
  - 51 4. Any other relevant factors.

- 1                   b.     Special assessment. – In the event that there are covered claims  
2                   against an insolvent member or members and the assets of the Fund  
3                   are not sufficient to pay the obligations of the Association, then the  
4                   Association may collect a special assessment from the members in an  
5                   amount sufficient to pay the aggregate value of such covered claims.  
6                   Each member's special assessment shall be determined by the Board  
7                   and shall be based on the proportion of the member's total obligations  
8                   under the Act to the aggregate total of all members' obligations under  
9                   the Act.
- 10                  c.     Initial assessments. – An individual self-insurer that becomes a  
11                  member and does not initially participate in the Association  
12                  Aggregate Security System shall pay an initial assessment to the  
13                  Association in an amount determined by the Board. A group  
14                  self-insurer, upon receiving its initial license from the Commissioner,  
15                  shall pay an initial assessment to the Association in an amount  
16                  determined by the Board.
- 17                  d.     Each member shall be notified of assessments no later than 30 days  
18                  before the assessment is due.
- 19                  e.     Delinquent assessments, except as otherwise provided, shall bear  
20                  interest at a rate to be established by the Board.
- 21                  f.     Group assessments. – The Association may annually assess each  
22                  member group self-insurer in an amount not to exceed two percent  
23                  (2%) of the group self-insurer's annual gross premiums for the  
24                  preceding calendar year, as determined under G.S. 105-228.5(b),  
25                  (b1), and (c).
- 26                  (4)    Be obligated to pay covered claims.
- 27                  (5)    After paying any covered claim, be subrogated to the rights of the injured  
28                  employee and dependents and be entitled to enforce liability against the  
29                  self-insurer or any third party by any appropriate action brought in its own  
30                  name or in the name of the injured employee and dependents.
- 31                  (6)    Expend Fund assets in amounts necessary to pay all of the following:
- 32                   a.     The obligations of the Association under this Article subsequent to  
33                   an insolvency.
- 34                   b.     The expenses of handling covered claims subsequent to an  
35                   insolvency.
- 36                   c.     The cost of examinations under G.S. 97-137.
- 37                   d.     The costs of implementing and operating the Association Aggregate  
38                   Security System.
- 39                   e.     All other expenses authorized by this Article.
- 40                  (7)    Investigate claims brought against the Association and adjust, compromise,  
41                  settle, and pay covered claims to the extent of the Association's obligation;  
42                  and deny all other claims. The Association may review settlements to which  
43                  the insolvent member was a party to determine the extent to which such  
44                  settlements may be properly contested.
- 45                  (8)    Notify such persons as the Commissioner directs under G.S. 97-136.
- 46                  (9)    Handle claims through its directors, its employees, or through one or more  
47                  members or other persons designated as servicing facilities. Designation of a  
48                  servicing facility is subject to the approval of the Commissioner, but  
49                  designation of a member as a servicing facility may be declined by such  
50                  member.

- 1 (10) Reimburse each servicing facility for obligations of the Association paid by  
2 the facility and for expenses incurred by the facility while handling claims  
3 on behalf of the Association.
- 4 (11) Pay any other expenses of the Association authorized by this section.
- 5 (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 6 (13) Require each member to determine annually its total undiscounted claims  
7 liability and shall require each member to notify the Association of this  
8 determination.
- 9 (b) The Association may:
- 10 (1) Employ or retain such persons, including, but not limited to, adjustors,  
11 brokers, accountants, attorneys, financial advisors, investment bankers,  
12 placement agents, and consultants, as the Board may determine are  
13 necessary to handle claims, perform other duties of, provide services to, and  
14 consult with the Association.
- 15 (2) Borrow funds necessary to effect the purposes of this Article in accord with  
16 the Plan, including entering into standby lines of credit.
- 17 (3) Sue or be sued.
- 18 (4) Negotiate and become a party to such contracts as are necessary to carry out  
19 the purpose of this section.
- 20 (5) Perform such other acts as are necessary or proper to effectuate the purpose  
21 of this section.
- 22 ~~(6) Reimburse the Department of Insurance up to twenty thousand dollars~~  
23 ~~(\$20,000) for consultants retained by the Department to review the initial~~  
24 ~~plan submitted pursuant to G.S. 97-133(a)(2a).~~
- 25 (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 26 (c1) The Association shall provide in its Plan that the functions of administration and  
27 adjusting claims shall not be performed by the same entity that provides legal representation to  
28 the Association for claims.
- 29 (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006."

30 **SECTION 11.** G.S. 97-134 reads as rewritten:

31 "**§ 97-134. Plan of Operation.**

32 The Plan is as follows:

- 33 (1) ~~The Association Board shall submit to the Commissioner adopt a Plan of~~  
34 Operation and any amendments necessary or suitable to assure the fair,  
35 reasonable, and equitable administration of the Association. ~~The Plan and~~  
36 ~~any amendments become effective upon approval in writing by the~~  
37 ~~Commissioner. If the Association at any time fails to submit a suitable Plan~~  
38 ~~or suitable amendment to the Plan the Commissioner shall, after notice and~~  
39 ~~hearing, adopt such reasonable rules as are necessary or advisable to~~  
40 ~~effectuate this Article. The rules shall continue in force until modified by the~~  
41 ~~Commissioner or superseded by a Plan submitted by the Association and~~  
42 ~~approved by the Commissioner.~~
- 43 (2) All member self-insurers shall comply with the Plan.
- 44 (3) The Plan shall:
- 45 a. Establish the procedures whereby all the powers and duties of the  
46 Association under G.S. 97-133 will be performed.
- 47 b. Establish procedures for investing and managing Fund assets.
- 48 c. Adopt a reasonable mechanism and procedure to achieve equity in  
49 assessing members under G.S. 97-133.
- 50 d. Establish the amount and method of reimbursing members of the  
51 Board under G.S. 97-132.

- 1 e. Establish procedures by which claims may be filed with the  
2 Association and establish acceptable forms of proof of covered  
3 claims.  
4 f. Establish regular places and times for meetings of the Board.  
5 g. Establish procedures for records to be kept of all financial  
6 transactions of the Association, its agents, and the Board.  
7 h. Provide that any member self-insurer aggrieved by any final action or  
8 decision of the Association may appeal to the Commissioner within  
9 30 days after the action or decision.  
10 ~~i. Establish the procedures whereby selections for the Board shall be~~  
11 ~~submitted to the Commissioner.~~  
12 j. Contain additional provisions necessary or proper for the execution  
13 of the powers and duties of the Association."

14 **SECTION 12.** G.S. 97-136(a) reads as rewritten:

15 **"§ 97-136. Powers and duties of the Commissioner.**

16 (a) The Commissioner shall:

- 17 (1) Notify the Association of the existence of an insolvent member self-insurer  
18 not later than 30 days after he receives notice of an insolvency pursuant to  
19 the standards set forth in G.S. 97-135.  
20 (2) ~~Approve or disapprove the plan for an Association Aggregate Security~~  
21 ~~System as required under G.S. 97-133(a)(2a)b. and notify the Association of~~  
22 ~~the information required under G.S. 97-133(a)(2a)e."~~

23 **SECTION 13.** G.S. 97-137 reads as rewritten:

24 **"§ 97-137. Examination of the Association.**

25 The Association shall be subject to examination and regulation by the Commissioner. The  
26 Board shall submit, not later than ~~March 30~~ June 1 of each year, a financial report for the  
27 preceding calendar year in a form approved by the Commissioner."

28 **SECTION 14.** G.S. 97-185 reads as rewritten:

29 **"§ 97-185. Deposits; surety bonds; letters of credit.**

30 (a) Repealed by Session Laws 2005-400, s. 13, effective January 1, 2006.

31 (a1) All individual self-insurers as defined in G.S. 97-130(5b) shall participate in the  
32 Association Aggregate Security System established under G.S. 97-131 unless excluded by the  
33 Board of Directors of the North Carolina Self-Insurance Security Association. The Board of  
34 Directors of the North Carolina Self-Insurance Security Association shall exclude all of the  
35 following from the Association Aggregate Security System:

- 36 (1) Individual self-insurers whose licenses have previously been revoked by the  
37 Commissioner.  
38 (2) Individual self-insurers with a debt rating as established by Standard &  
39 Poor's Rating Service or by Moody's Investor Service, below the minimum  
40 Standard & Poor's ~~and or~~ Moody's ratings if a minimum debt rating has been  
41 established in the written plan by the Board of Directors of the North  
42 Carolina Self-Insurance Security Association for the Association Aggregate  
43 Security System submitted by the Association and approved by the  
44 Commissioner under G.S. 97-133(a)(2a).System.  
45 (3) Individual self-insurers that have defaulted on the payment of their  
46 self-insured workers' compensation liabilities.  
47 (4) Individual self-insurers that fail to submit sufficient financial information to  
48 enable the Association to determine their total outstanding workers'  
49 compensation liabilities, or their creditworthiness, or both.

1 The Board of Directors of the North Carolina Self-Insurance Security Association shall  
2 notify the Commissioner of the individual self-insurers that are excluded from participating in  
3 the Association Aggregate Security System.

4 (b) Repealed by Session Laws 2003-115, s. 3, effective January 1, 2004.

5 (b1) Repealed by Session Laws 2005-400, s. 13, effective January 1, 2006.

6 (b2) An individual self-insurer that is excluded from participation in the Association  
7 Aggregate Security System, including individual self-insurers that are granted a license to  
8 self-insure after the North Carolina Self-Insurance Security Association annually implements  
9 the Association Aggregate Security System, shall deposit with the Commissioner an amount  
10 not less than one hundred percent (100%) of the individual self-insurer's total undiscounted  
11 outstanding claims liability per the most recent report from a qualified actuary as required by  
12 G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such greater  
13 amount as the Commissioner prescribes based on, but not limited to, the financial condition of  
14 the individual self-insurer and the risk retained by the individual self-insurer.

15 (b3) During any period of time that no Association Aggregate Security System is in  
16 effect, individual self-insurers with a debt rating of BBB or better from Standard & Poor's  
17 Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national  
18 rating agency shall deposit with the Commissioner an amount not less than fifty percent (50%)  
19 of the individual self-insurer's total undiscounted outstanding claims liability per the most  
20 recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five  
21 hundred thousand dollars (\$500,000). An individual self-insurer licensed pursuant to  
22 G.S. 97-177 may utilize the debt rating of its guarantor for the purpose of establishing the  
23 application of this subsection. The Commissioner shall consider and may, in the  
24 Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of  
25 the individual self-insurer's claims liability based on the financial strength of the individual  
26 self-insurer and other financial information submitted by the individual self-insurer. All other  
27 individual self-insurers shall deposit with the Commissioner an amount not less than one  
28 hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims  
29 liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but  
30 not less than five hundred thousand dollars (\$500,000), or such greater amount as the  
31 Commissioner prescribes based on, but not limited to, the financial condition of the individual  
32 self-insurer and the risk retained by the individual self-insurer.

33 (c) Deposits received, changes to existing deposits, or deposits exchanged after the  
34 effective date of this section, shall be comprised of one or more of the following:

35 (1) Interest-bearing bonds of the United States of America.

36 (2) Interest-bearing bonds of the State of North Carolina, or of its cities or  
37 counties.

38 (3) Certificates of deposit issued by any solvent bank domesticated in the State  
39 of North Carolina that have a maturity of one year or greater.

40 (4) Surety bonds in a form acceptable to the Commissioner and issued by a  
41 corporate surety. A surety bond deposited pursuant to this subsection shall  
42 require that the surety reimburse the Commissioner, or his successors,  
43 assigns, or transferees, for any costs incurred in the collection of the  
44 proceeds of the surety bond, including reasonable attorneys' fees, and any  
45 costs incurred in administering the insolvent self-insurer's workers'  
46 compensation claims.

47 (4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued  
48 by a bank acceptable to the Commissioner. An irrevocable letter of credit  
49 deposited pursuant to this subsection shall require that the bank reimburse  
50 the Commissioner, or his successors, assigns, or transferees for any costs

1 incurred in the collection of the proceeds of the letter of credit, including  
2 reasonable attorneys' fees.

3 (4b) The reimbursement of attorneys' fees and collections cost provided for in  
4 subdivisions (4) and (4a) of this subsection shall be no greater than fifteen  
5 percent (15%) of the penal amount of the bond and shall not come from the  
6 proceeds of the bond or the letter of credit but shall be in addition to the  
7 proceeds of the bond or the letter of credit.

8 (5) Any other investments that are approved by the Commissioner.

9 (d) All bonds or securities that are posted as a security deposit shall be valued annually  
10 at market value. If the market value is less than the face value, the Commissioner may require  
11 the self-insurer to post additional securities. In making this determination, the Commissioner  
12 shall consider the self-insurer's or guarantor's financial condition, the amount by which market  
13 value is less than face value, and the likelihood that the securities will be needed to provide  
14 benefits.

15 (e) Securities deposited under this section shall be assigned to the Commissioner, the  
16 Commissioner's successors, assigns, or trustees, on a form prescribed by the Commissioner in a  
17 manner that renders the securities negotiable by the Commissioner. If a self-insurer or  
18 guarantor is deemed by the Commissioner to be in a hazardous financial condition, the  
19 Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet  
20 the self-insurer's obligations under the Act. In the case of a letter of credit, the Commissioner  
21 may draw the full amount of a letter of credit if the letter of credit is not renewed within 90  
22 days prior to its expiration or at any time that the bank issuing the letter of credit is no longer  
23 acceptable to the Commissioner. Interest accruing on any negotiable security deposited under  
24 this Article shall be collected and transmitted to the self-insurer if the self-insurer or guarantor  
25 is not in a hazardous financial condition.

26 (f) No judgment creditor, other than a claimant entitled to benefits under the Act, may  
27 levy upon any deposits made under this section.

28 (g) Pursuant to the provisions of this section and with the approval of the  
29 Commissioner, deposits held by the Commissioner may be replaced with other acceptable  
30 forms of deposit in amount determined by the Commissioner. Any deposit to be replaced with  
31 another form of deposit shall not be released until the approved replacement deposit is received  
32 by the Commissioner.

33 (h) Any self-insurer that ceases to self-insure, whether by voluntary termination or by  
34 revocation of license, shall continue to secure and be liable for its obligations under the Act and  
35 shall continue to report to the Commissioner pursuant to G.S. 97-180. Upon the request of the  
36 Commissioner, a self-insurer that ceases to self-insure shall submit filings, as prescribed in  
37 G.S. 97-180, to determine whether the deposit is sufficient to satisfy those workers'  
38 compensation obligations incurred during the period that the self-insurer was licensed as a  
39 self-insurer. The Commissioner may require an increase in the deposit amount or may grant a  
40 reduction in the deposit amount to ensure that the deposit is sufficient to cover all existing and  
41 future obligations incurred by the self-insurer while subject to the provisions of the Act.

42 (i) An endorsement to a surety bond shall be filed with the Commissioner within 90  
43 days after the effective date of the endorsement."

44 **SECTION 15.** Sections 1, 3, and 9 through 14 of this act become effective July 1,  
45 2011. Sections 2, 4, 5, and 6 of this act become effective October 1, 2011. Section 7 of this act  
46 becomes effective July 1, 2012, and applies to licenses issued on or after that date. The  
47 remainder of this act is effective when it becomes law.