

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-400
SENATE BILL 319**

AN ACT ESTABLISHING THE NORTH CAROLINA SELF-INSURANCE SECURITY SYSTEM AND CLARIFYING THE PROCEDURES BY WHICH SUBSIDIARY AND AFFILIATE COMPANIES MAY BE LICENSED AS SELF-INSURERS FOR WORKERS COMPENSATION AND TO MAKE OTHER CONFORMING AND TECHNICAL CHANGES TO THE WORKERS COMPENSATION LAWS RESPECTING INDIVIDUAL SELF-INSURERS IN ARTICLE 5 OF CHAPTER 97 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.1. The title of Article 4 of Chapter 97 reads as rewritten:

"Article 4.

North Carolina Self-Insurance ~~Guaranty~~ Security Association."

SECTION 1.2. G.S. 97-130 reads as rewritten:

"§ 97-130. Definitions.

As used in this Article:

- (1) "Association" means the North Carolina Self-Insurance ~~Guaranty~~ Security Association established by G.S. 97-131.
- (1a) "Association Aggregate Security System" means the security system established by the Association under G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities through the North Carolina Self-Insurance Security Association.
- (2) "Board" means the Board of Directors of the Association established by G.S. 97-132.
- (3) "Commissioner" means the North Carolina Commissioner of Insurance.
- (4) "Covered claim" means an unpaid claim against an insolvent individual self-insurer or group self-insurer that relates to an injury that occurs while the individual self-insurer or group self-insurer is a member of the Association and that is compensable under this Chapter.
- (5) "Fund" means the North Carolina Self-Insurance ~~Guaranty~~ Security Fund established by G.S. 97-133.
- (5a) "Group" or "Group self-insurer" means a group self-insurer licensed by the Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.

- (5b) "Individual self-insurer" means an individual employer licensed by the Commissioner under Article 5 of this Chapter.
- (6) "Member self-insurer" or "member" means a self-insurer which is authorized by the Commissioner to self-insure pursuant to G.S. 97-93 and G.S. 97-94, an individual self-insurer or group self-insurer that is required to be a member of the Association under this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.
- (7) "Plan" means the Plan of Operation authorized by G.S. 97-134.
- (8) ~~"Self-insurer" means either: (i) an individual employer who has demonstrated under G.S. 97-93 the financial ability to directly pay compensation in the amounts and manner and when due as provided in this Chapter or (ii) a group of two or more employers who have agreed to pool their liabilities under this Chapter pursuant to G.S. 97-93.~~
- (9) "Servicing facility" means those persons delegated by the Board and approved by the Commissioner to settle or compromise claims and to expend Fund assets to pay claims."

SECTION 2. G.S. 97-131 reads as rewritten:

"§ 97-131. Creation.

(a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Self-Insurance ~~Guaranty~~ Security Association. The Association is to provide mechanisms for the payment of covered claims ~~under self-insurance coverage, against member self-insurers,~~ to avoid excessive delay in ~~payment,~~ payment of covered claims, to avoid financial loss to claimants because of the insolvency of a member self-insurer, ~~and to assist, when called upon to do so by the Commissioner,~~ to assist the Commissioner in the detection of self-insurer insolvencies, ~~insolvencies,~~ to fund the Association Aggregate Security System, and to capitalize the Fund to ensure the availability of financial resources to pay covered claims and to fund the activities of the Association.

(b) All individual self-insurers and group self-insurers shall be and remain members of the Association as a condition of ~~authority being licensed~~ to self-insure in this State under G.S. 97-93. ~~State.~~ The Association shall perform its functions under a Plan of Operation established or amended, or both, by the Board and approved by the Commissioner, and shall exercise its powers through the Board.

- (1) ~~A~~ An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of another ~~self-insurer's~~ member's insolvency, as defined in G.S. 97-135, when:
 - a. The individual self-insurer or group self-insurer is a member of the Association when an insolvency occurs, or
 - b. The individual self-insurer or group self-insurer has been a member of the Association at some point in time during the 12-month period immediately preceding the insolvency in question.

- (2) ~~A~~An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs.
- (3) In determining the membership of the Association pursuant to for the purposes of subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no employer individual self-insurer or group of employers claiming self-insurer status self-insurer may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer ~~or is~~ on that date licensed as an individual self-insurer by the Commissioner under Article 5 of this Chapter or a group of employers is at that time authorized licensed as a group self-insurer by the Commissioner pursuant to G.S. 97-93 and G.S. 97-94 under Article 47 of Chapter 58 of the General Statutes."

SECTION 3. G.S. 97-132 reads as rewritten:

"§ 97-132. Board of directors.

The Board shall consist of not less than nine ~~persons~~ directors serving terms as established in the Plan. The ~~members of the Board~~ directors shall be selected by the ~~member self-insurers, members of the Association,~~ subject to the approval of the Commissioner, and shall serve for ~~terms which shall not exceed three years. If no members of the Board are selected within 60 days after the effective date of this Article, the Commissioner may appoint the initial members of the Board.~~ three-year terms and until a successor is elected and qualified. There is no limitation on the number of terms a director may serve. In approving selections to the Board, the Commissioner shall consider, among other things, whether ~~all member individual self-insurers and group self-insurers~~ are fairly represented. ~~Members of the Board~~ Directors may be reimbursed from the assets of the Association for expenses incurred by them as ~~members of the Board~~ directors."

SECTION 4. G.S. 97-133 reads as rewritten:

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

(a) The Association shall:

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

(1a) Administer a fund, to be known as the North Carolina Self-Insurance Security Fund, which shall receive the assets of the North Carolina Self-Insurance Guaranty Fund previously established under subdivision (2) of this subsection, the assessments required by subdivisions (2a) and (3a) of this subsection and any other sums received by the Association. In its discretion, the Board may determine that the assets of the Fund should be segregated or that a separate accounting shall be made in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board segregates the Fund in this manner, the Association shall thereafter pay covered claims against individual

member self-insurers from that portion of the Fund that represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund that represents assessments against group self-insurers. The costs of administering the Association shall be borne by the Fund. The Association is authorized to secure insurance, primary excess insurance, reinsurance, bonds, other insurance, financial guarantees and related financial instruments to effectuate the purposes of the Association. The Board will invest the Fund assets pursuant to an investment policy adopted by the Board and reviewed and approved annually by the Department of the State Treasurer. The earnings from investment of Fund assets shall be placed in or credited to the Fund.

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

- a. ~~Each individual member self insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105 228.5(b), (b1), and (c), that would have been paid by that member self insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual gross premiums for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual gross premiums. Each group member self insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105 228.5(b), (b1), and (c), of the group member self insurer during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self insurer may discount or reduce this two percent (2%) assessment. For the purpose of making the assessments authorized by this subsection and subsections (c) and (d) of this section, the Secretary of Revenue shall provide to the Association the self insurer premium and payroll information as determined under G.S. 105 228.5(b), (b1) and (c), and the Commissioner shall provide to the Association the group self insurer premium information reported to the Commissioner under G.S. 58 47 75 and G.S. 58 2 165.~~
- b. ~~Each member self insurer shall be notified of the assessment no later than 30 days before it is due.~~
- c. ~~If a self insurer is a member of the Association for less than a full calendar year, the annual gross premiums shall be adjusted~~

~~by that portion of the year the self insurer is not a member of the Association.~~

- ~~d. If application of the contribution rates referenced in sub-subdivision a. of this subdivision would produce an amount in excess of the five million dollar (\$5,000,000) limits of the fund, an equitable proration may be made; provided that every self insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board, regardless of the size of the fund at the time the member joins the Association.~~

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

- a. The Association shall annually prepare and submit to the Commissioner a written plan to provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees owned or entered into by the Association and acceptable to the Commissioner. The written plan shall include, but not be limited to, (i) a description of the institutions that will issue or guarantee the securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees, including, but not limited to, the credit rating, financial strength, and AM best rating, if applicable to the institutions (ii) applicable cash flow information and financial assumptions (iii) a description of the methodology to be used by the Association to assess and collect the Association Aggregate Security System assessments to be made pursuant to subdivision (3a) of this subsection and (iv) a proposed timetable for the release of existing individual company deposits posted pursuant to G.S. 97-185(c), provided, however, that no individual company deposits posted pursuant to G.S. 97-185(c) shall be released without the written consent of the Commissioner. The noncash elements of the composite security may be one-year or multiple-year instruments.

- b. Within 90 days following the submission of the initial plan under sub-subdivision a. of this subdivision, the Commissioner shall either approve or disapprove the initial plan and shall notify the Association in writing. If the Commissioner does not approve or disapprove the initial plan within 90 days following submission, then the initial plan shall be deemed to be approved by the Commissioner. All subsequent plans shall be either approved or disapproved within 60 days following submission.

- c. The Commissioner shall also determine the total undiscounted claims liability of each individual self-insurer that will participate in the Association Aggregate Security System as well as the aggregate total undiscounted outstanding claims liabilities of all the individual self-insurers that are to participate in the Association Aggregate Security System and shall notify the Association of this determination.
 - d. Upon approval by the Commissioner of the Association's plan for the Association Aggregate Security System, the Association shall assess the individual self-insurers that participate in the Association Aggregate Security System pursuant to subdivision (3a) of this subsection.
 - e. If the Commissioner disapproves the plan for any year, every self-insurer shall deposit with the Commissioner, or continue to deposit, the amount required by G.S. 97-185(b3) in the manner prescribed by G.S. 97-185(c).
 - f. Group self-insurers shall not participate in the Association Aggregate Security System.
- (3) ~~Administer a fund, to be known as the North Carolina Self Insurance Guaranty Fund, which shall receive the assessments required in subdivision (2) of this subsection. Once the Fund reaches five million dollars (\$5,000,000), no further assessments shall be made except initial assessments of new member self insurers that are required to be made in subdivision (2)d. of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of five million dollars (\$5,000,000). In its discretion, the Board may determine that the assets of the Fund should be segregated, or, that a separate accounting shall be made, in order to identify that portion of the Fund which represents assessments paid by individual self insurers and that portion of the Fund which represents assessments paid by group self insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self insurers from that portion of the Fund which represents assessments against individual self insurers and shall thereafter pay covered claims against group member self insurers from that portion of the Fund which represents assessments against group self insurers. The cost of administration incurred by the Association shall be borne by the Fund and the Association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the Association, subject to the approval of the Commissioner. All earnings from investment of Fund assets shall be placed in or credited to the Fund.~~

~~The Association may purchase primary excess insurance from an insurer licensed by the Commissioner for the appropriate lines of~~

~~authority to defray its exposure to loss occasioned by the default of one of its members. The terms of any excess insurance so purchased shall be limited to providing coverage of liabilities which exceed the Fund's assets after the payment by member self-insurers of the maximum post-insolvency assessment provided in subdivision (c)(1) of this section herein and the Association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered earnings of the Fund or any other available funds. The Association may obtain from each member any information the Association may reasonably require in order to facilitate the securing of this primary excess insurance. The Association shall establish reasonable safeguards designed to insure that information so received is used only for this purpose and is not otherwise disclosed;~~

(3a) Assess members of the Association as follows:

- a. Association Aggregate Security System assessments. – The Association shall assess each individual self-insurer participating in the Association Aggregate Security System a security system assessment. The amount of the security system assessment charged to each individual self-insurer participating in the Association Aggregate Security System shall be based on the Association's reasonable consideration of all of the following factors:
 1. The total amount of assessments necessary to provide aggregate security for all participating individual self-insurers.
 2. The individual self-insurer's total workers' compensation liabilities under the Act.
 3. The financial strength and creditworthiness of the participating individual self-insurer.
 4. Any other relevant factors.
- b. Special assessment. – In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association may collect a special assessment from the members in an amount sufficient to pay the aggregate value of such covered claims. Each member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.
- c. Initial assessments. – An individual self-insurer that becomes a member and does not initially participate in the Association Aggregate Security System shall pay an initial assessment to the Association in an amount determined by the Board. A group

- self-insurer, upon receiving its initial license from the Commissioner, shall pay an initial assessment to the Association in an amount determined by the Board.
- d. Each member shall be notified of assessments no later than 30 days before the assessment is due.
 - e. Delinquent assessments, except as otherwise provided, shall bear interest at a rate to be established by the Board.
- (4) ~~Be obligated to the extent of covered claims occurring prior to the determination of the member self insurer's insolvency, or occurring after such determination but prior to the obtaining by the self insurer of workers' compensation insurance as otherwise required under this Chapter.~~ pay covered claims.
 - (5) ~~After paying any claim resulting from a self insurer's insolvency,~~ covered claim, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer or any third party by any appropriate action brought in its own name or in the name of the injured employee and ~~dependents;~~dependents.
 - (6) ~~Assess the Fund in an amount necessary to pay only;~~Expend Fund assets in amounts necessary to pay all of the following:
 - a. ~~The obligations for~~of the Association under this Article subsequent to an ~~insolvency;~~insolvency.
 - b. ~~The expenses of handling covered claims subsequent to an~~ insolvency;insolvency.
 - c. ~~The cost of examinations under G.S. 97-137; and~~G.S. 97-137.
 - d. The costs of implementing and operating the Association Aggregate Security System.
 - e. ~~Other~~ All other expenses authorized by this ~~Article;~~Article.
 - (7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent ~~self insurer~~member was a party to determine the extent to which such settlements may be properly ~~contested;~~contested.
 - (8) Notify such persons as the Commissioner directs under ~~G.S. 97-136;~~G.S. 97-136.
 - (9) Handle claims through its ~~employees~~directors, its employees, or through one or more ~~self insurers;~~members or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Commissioner, but designation of a member ~~self insurer~~as a servicing facility may be declined by such ~~self insurer;~~member.
 - (10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the ~~Association;~~Association.

- (11) ~~Pay the any other expenses of the Association authorized by this section; and section.~~
 - (12) ~~Establish in the Plan a mechanism to calculate the assessments required by subdivisions (2) and (3) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~
- (b) The Association may:
- (1) Employ or retain such persons—persons, including, but not limited to, adjustors, brokers, accountants, attorneys, financial advisors, investment bankers, placement agents, and consultants, as the Board may determine are necessary to handle elaims—claims, and—perform other duties of of, provide services to, and consult with the Association; Association.
 - (2) Borrow funds necessary to effect the purposes of this Article in accord with the ~~Plan; Plan, including entering into standby lines of credit.~~
 - (3) Sue or be ~~sued; sued.~~
 - (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this ~~section; and section.~~
 - (5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.
 - (6) Reimburse the Department of Insurance up to twenty thousand dollars (\$20,000) for consultants retained by the Department to review the initial plan submitted pursuant to G.S. 97-133(a)(2a).

(c) ~~In the event that the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association shall impose an additional assessment upon its members, which shall be known as a post insolvency assessment which shall be imposed as follows:~~

- (1) ~~Each individual member self insurer shall be assessed in an amount not to exceed two percent (2%) each year of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self insurer during the prior calendar year. The assessments of each individual member self insurer shall be in the proportion that the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the individual member self insurer for the premium calendar year bears to the annual gross premiums of all individual member self insurers for the preceding calendar year. For group member self insurers, the assessment shall not exceed two percent (2%) each year the annual premium collected by that group member self insurer during the prior calendar year. The assessments of each group member self insurer shall be in the proportion that the annual gross premiums of the group member self insurer for the premium calendar year bears to the annual gross premiums of all group member self insurers for the preceding calendar year.~~

- (2) ~~Each member self insurer shall be notified of the assessment no later than 30 days before it is due.~~
- (3) ~~The Association may exempt or defer, in whole or in part, the assessment of any member self insurer, if the assessment would cause that member's financial statement to reflect liabilities in excess of assets.~~
- (4) ~~Delinquent assessments, except as provided in subdivision (3) of this subsection, shall bear interest at the rate to be established by the Board, but not to exceed the discount rate of the Federal Reserve Bank, Richmond, Virginia, on the due date of the assessment, plus four percent (4%) annually, computed from the due date of the assessment.~~
- (5) ~~The Association shall establish in the Plan a mechanism to calculate the assessments required by subdivision (1) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

(c1) The Association shall provide in its Plan that the functions of administration and adjusting claims shall not be performed by the same entity that provides legal representation to the Association for claims.

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

SECTION 5. G.S. 97-134 reads as rewritten:

"§ 97-134. Plan of Operation.

The Plan is as follows:

- (1) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any amendments become effective upon approval in writing by the Commissioner. If the Association at any time fails to submit a suitable Plan or suitable amendment to the Plan the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate this Article. ~~Such~~ The rules shall continue in force until modified by the Commissioner or superseded by a Plan submitted by the Association and approved by the Commissioner.
- (2) All member self-insurers shall comply with the Plan.

- (3) The Plan shall:
- a. Establish the procedures whereby all the powers and duties of the Association under G.S. 97-133 will be ~~performed;~~performed.
 - b. Establish procedures for ~~handling—assets—of—the Association;~~investing and managing Fund assets.
 - c. Adopt a reasonable mechanism and procedure to achieve equity in assessing the funds required in G.S. 97-133. ~~Consideration shall be given to adjustments for audited payroll, differential effects caused by rate changes, and other relevant factors;~~members under G.S. 97-133.
 - d. Establish the amount and method of reimbursing members of the Board under ~~G.S. 97-132;~~G.S. 97-132.
 - e. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. ~~A list of such claims shall be periodically submitted to the Association;~~
 - f. Establish regular places and times for meetings of the ~~Board;~~Board.
 - g. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the ~~Board;~~Board.
 - h. Provide that any member self-insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or ~~decision;~~decision.
 - i. Establish the procedures whereby selections for the Board shall be submitted to the ~~Commissioner; and~~Commissioner.
 - j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association."

SECTION 6.1. G.S. 97-135 reads as rewritten:

"§ 97-135. Insolvency.

A member self-insurer shall be insolvent for the purposes of this Article under any of the following circumstances:

- (1) Determination of insolvency by a court of competent ~~jurisdiction;~~ jurisdiction.
- (2) Institution of bankruptcy proceedings by or regarding the member ~~self-insurer; or~~ self-insurer.
- (3) The Board determines that the member self-insurer's total liabilities exceed its total assets or the member self-insurer is unable or ceases to pay its debts as they fall due or in the ordinary course of business.
- (4) A member self-insurer is deemed to be insolvent, bankrupt, or in default as defined by the terms of any security instrument created pursuant to the Association Aggregate Security System."

SECTION 6.2. G.S. 97-136 reads as rewritten:

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

- (a) The Commissioner ~~shall notify~~ shall:
- (1) Notify the Association of the existence of an insolvent member self-insurer not later than 30 days after he receives notice of an insolvency pursuant to the standards set forth in G.S. 97-135.
 - (2) Approve or disapprove the plan for an Association Aggregate Security System as required under G.S. 97-133(a)(2a)b. and notify the Association of the information required under G.S. 97-133(a)(2a)c.
- (b) The Commissioner may:
- (1) Require that the Association notify the insureds of the insolvent member self-insurer and any other interested parties of the insolvency and of their rights under this Article. ~~Such~~ The notifications shall be by mail at their last known addresses, where available; but if required information for notification is not available, notice by publication in a newspaper of general circulation in this State shall be sufficient; and
 - (2) Revoke the designation of any servicing facility if ~~he~~ the Commissioner finds claims are being handled unsatisfactorily."

SECTION 7. G.S. 97-140 reads as rewritten:

"§ 97-140. Nonduplication of recovery.

Any person having a covered claim that may be recovered under more than one insurance or self-insurance guaranty or security association or its equivalent shall seek recovery first from the association of the place or residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty or security association or its equivalent."

SECTION 8. G.S. 97-143 reads as rewritten:

"§ 97-143. Use of deposits made by insolvent member self-insurers.

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend ~~the any~~ deposit made by the insolvent member under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the Association to pay covered claims against the insolvent member as required by this Article, and to the extent the deposit is needed to pay expenses of the Association relating to covered claims against the insolvent member. For insolvent individual member self-insurers that participate in the Association Aggregate Security System, the Association is authorized to pursue recovery under every instrument, contract, and form of security comprising the composite security. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section."

SECTION 9. G.S. 97-165 reads as rewritten:

"§ 97-165. Definitions.

As used in this Article:

- (1) 'Act' means the Workers' Compensation Act established in Article 1 of this Chapter.

- (1a) 'Affiliate of' or 'person affiliated with' a specific person means a person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.
- (1b) 'Association Aggregate Security System' means the security system established pursuant to G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities under the Act through the North Carolina Self-Insurance Security Association.
- (2) 'Certified audit' means an audit on which a certified public accountant expresses his or her professional opinion that the accompanying statements fairly present the financial position of the ~~self-insurer,~~ self-insurer or the guarantor, in conformity with ~~generally accepted accounting principles.~~ accounting principles generally accepted in the United States.
- (3) 'Certified public accountant' or 'CPA' means a CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on the GAAP financial statement and require the ~~individual self-insurer or the guarantor~~ to replace the CPA with another whose relationship with the ~~individual self-insurer or the guarantor~~ is independent within the meaning of this definition.
- (4) 'Commissioner' means the Commissioner of Insurance.
- (4a) 'Control', 'controlling', 'controlled by', and 'under common control with' mean the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person through ownership of or through proxies for voting of greater than fifty percent (50%) of the voting securities, or in the case of a not-for-profit entity, the power to direct or cause the direction of the management and policies of the entity.
- (5) 'Corporate surety' means an insurance company authorized by the Commissioner to write surety business in this State.
- (6) 'GAAP financial statement' means a financial statement as defined by ~~generally accepted accounting principles.~~ principles generally accepted in the United States.
- (6a) 'Guarantor' means a person within the same holding company system who controls the applicant, whose financial statement is used by the

- applicant to become a self-insurer under the Act, and who has guaranteed the payment of the self-insurer's liability under the Act.
- (7) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a self-insurer or guarantor is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet its obligations with respect to known claims and reasonably anticipated claims or to pay other obligations in the normal course of business.
- (7a) 'Holding company system' means an entity comprising two or more affiliated persons.
- (8) 'Management' means those persons who are authorized to direct or control the operations of a self-insurer.
- (8a) 'Person' means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.
- (9) 'Qualified actuary' means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries, who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, and is in compliance with G.S. 58-2-171.
- (10) 'Self-insurer' means an ~~employer who retains liability under the Act and is licensed under this Article.~~ individual self-insurer as defined by G.S. 97-130(5b).
- (11) 'Subsidiary of a specific person means an affiliate controlled by such person indirectly through one or more intermediaries or an affiliate directly controlled by such person.'

SECTION 10. G.S. 97-170 reads as rewritten:

"§ 97-170. License applications; required information.

(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date.

(b) An applicant for a license as a self-insurer shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information. A copy of the application must also be filed with the North Carolina Self-Insurance Security Association at least 90 days before the proposed licensing date.

(c) Only an applicant whose total fixed assets amount to five hundred thousand dollars (\$500,000) or more may apply for a license. In judging the applicant's financial

strength and liquidity relative to its ability to comply with the Act, the Commissioner shall consider ~~all of the following relative to the applicant's:~~applicant:

- (1) Organizational structure and ~~management;~~management.
- (2) Financial ~~strength;~~strength.
- (3) Source and reliability of financial ~~information;~~information.
- (4) Risks to be ~~retained;~~retained.
- (5) Workers' compensation loss ~~history;~~history.
- (6) Number of ~~employees;~~employees.
- (7) Claims ~~administration;~~administration.
- (8) Excess ~~insurance;~~ and insurance.
- (9) Access to excess insurance.

(d) The license application shall ~~comprise~~ be comprised of the following information:

- (1) ~~Company name,~~ Applicant name; ~~organizational structure,~~ structure of the applicant, including any controlling entity, subsidiaries, or affiliates; ~~location of principal office,~~ office; ~~contact person,~~ person; ~~organization date,~~ date; ~~type of operations within this State,~~ State; ~~management background,~~ background; and addresses of all plants or offices in this State.
- (2) Certified audited GAAP financial statements prepared by a CPA for the two most recent years. The financial statement ~~formulation presentation~~ shall facilitate application of ratio and trend analysis.
- ...
- (6) Summary of workers' compensation benefits paid for the last three ~~calendar years,~~ as well as years and the total liability for all open claims within 30 days or some other period acceptable to the Commissioner not to exceed 90 days, before the filing of the application.
- ...
- (8) ~~Book value of fixed assets located within the State.~~
- (9) Proof of compliance with the claims administration provisions of Article 47 of Chapter 58 of the General Statutes.
- (10) A letter of ~~assent,~~ stipulating the applicant's acceptance of membership status in approval for membership by the North Carolina Self-Insurance Guaranty Association under Article 4 of this Chapter. Security Association.

(e) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to participate in the Association Aggregate Security System, or if excluded from the Association Aggregate Security System, to deposit with the Commissioner pursuant to G.S. 97-185 cash, acceptable securities, an irrevocable letter of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner, or a surety bond issued by a corporate ~~surety~~ surety, or a combination thereof, that will guarantee the applicant's compliance with this Article and the ~~Act pursuant to G.S. 97-185.~~ Act."

SECTION 11. Article 5 of Chapter 97 of the General Statutes is amended by adding the following new section:

"§ 97-177. License covering applicant and any subsidiary or applicant relying on a guarantor; procedure; requirements.

(a) The Commissioner may, in the Commissioner's discretion, upon request by an applicant, issue a license to an applicant or to an applicant and one or more of its subsidiaries if all of the following requirements are satisfied:

- (1) The applicant or a guarantor of the applicant executes a guaranty agreement, in a form prescribed by the Commissioner, for the payment of all workers' compensation liabilities covered under the Act. For any applicant or guarantor that is a corporation, there shall be submitted, along with the guaranty agreement, a board of directors' resolution from the respective corporation authorizing the guaranty of the liabilities of the subsidiary company or companies and granting signature authority to each person or officer executing the agreement.
- (2) The applicant or guarantor files a statement with the Commissioner that lists the percentage of ownership of voting securities or proxies representing voting securities owned or held by the applicant or guarantor for each subsidiary, or in the case of a not-for-profit entity, documentation acceptable to the Commissioner evidencing control.
- (3) The applicant and its guarantor or the applicant and its subsidiaries, whichever applies, satisfy the requirements of G.S. 97-170(c).
- (4) All other applicable requirements for licensure under the Act are satisfied.

(b) A license issued by the Commissioner pursuant to this section shall include the name of the applicant, the name of each licensed subsidiary, and the date of issuance for each licensed subsidiary.

(c) If a self-insurer requests to add a subsidiary to its license, the Commissioner shall review the request in accordance with this section. Upon approval, the Commissioner shall issue to the self-insurer a new license that includes the newly licensed subsidiary and the date of license issuance for the newly licensed subsidiary, and the self-insurer shall return the original license to the Commissioner.

(d) A self-insurer shall neither include nor delete a subsidiary from its license without the Commissioner's prior written approval.

(e) If a controlling relationship or guaranty agreement terminates, the self-insurer shall retain all liabilities under the Act that were incurred by the self-insurer during the period of self-insurance and shall account for all such liabilities until discharged, as evidenced by reports filed with the Commissioner. Termination of a guaranty agreement does not affect the guarantor's liability for payment of liabilities arising prior to termination of the agreement."

SECTION 12. G.S. 97-180 reads as rewritten:

"§ 97-180. Reporting and records.

(a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a certified audited GAAP financial statement, prepared by a CPA, for that fiscal

year. The financial statement ~~formulation~~ presentation shall facilitate the application of ratio and trend analysis. If the self-insurer was issued a license pursuant to G.S. 97-177, the financial statement required under this subsection shall be that of the guarantor.

(b) Every self-insurer shall submit within 120 days after the end of its fiscal year a ~~certification~~ report from a qualified actuary setting forth ~~the actuary's~~ an opinion ~~relating to certifying the~~ loss and loss adjustment expense reserves for workers' compensation obligations ~~for in~~ North Carolina. The ~~certification~~ report shall show liabilities, excess insurance carrier and other qualifying credits, if any, and net retained workers' compensation liabilities. ~~The qualified actuary shall present an annual report to the self-insurer on the items within the scope of and supporting the certification, within 90 days after the close of the self-insurer's fiscal year. Upon request, the report shall be submitted to the Commissioner.~~

(c) Every self-insurer shall submit within 120 days after the end of its fiscal year a report in the form of a sworn statement prescribed by the Commissioner, setting forth the total workers' compensation benefits paid in the previous fiscal year, ~~as well as and~~ the total outstanding workers' compensation liabilities for each loss year, recorded at the close of its fiscal year for the net retained liability.

(d) Upon the request of the Commissioner, every self-insurer shall submit a report of its annual payroll information. The report shall summarize payroll, by annual amount paid, and the number of employees, by classification, using the rules, classifications, and rates in the most recently approved Workers' Compensation and Employers' Liability Insurance Manual governing the audits of payrolls and the adjustments of premiums. Every self-insurer shall maintain true and accurate payroll records. These payroll records shall be maintained to allow for verification of the completeness and accuracy of the annual payroll report.

(e) Every self-insurer shall report promptly to the Commissioner changes in the ~~names and addresses~~ name or address of the ~~businesses it self insures or intends to self insure, as well as self-insurer or guarantor;~~ significant changes in the financial ~~condition,~~ condition of the self-insurer, guarantor, or any affiliate, including bankruptcy ~~filings,~~ filings; and changes in its ~~business~~ organizational structure, including its ~~divisions, subsidiaries, affiliates, and internal organization.~~ subsidiaries and affiliates. Any change shall be reported in writing to the Commissioner within 10 days after the effective date of the change. Upon request by the Commissioner, a self-insurer shall provide the Commissioner copies of documents or information deemed necessary to determine whether any change has affected the privilege of the employer to self-insure."

SECTION 13. G.S. 97-185 reads as rewritten:

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

(a) ~~(Effective January 1, 2005, until January 1, 2006)~~ Every self-insurer shall deposit with the Commissioner an amount not less than seventy five percent (75%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.

~~(a) (Effective January 1, 2006) Every self insurer shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the self insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self insurer and the risk retained by the self insurer.~~

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

- (1) Individual self-insurers whose licenses have previously been revoked by the Commissioner.
- (2) Individual self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's and Moody's ratings established in the written plan for the Association Aggregate Security System submitted by the Association and approved by the Commissioner under G.S. 97-133(a)(2a).
- (3) Individual self-insurers that have defaulted on the payment of its self-insured workers' compensation liabilities from participation in the Association Aggregate Security System.

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

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

~~(b1) Notwithstanding subsection (a) of this section, member self insurers with a debt rating of BBB or better from Standard and Poor's Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than twenty five percent (25%) of the self insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000). The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the member self insurer's claims liability based on the financial strength of the self insurer and other financial information submitted by the self insurer.~~

(b2) An individual self-insurer that is excluded from participation in the Association Aggregate Security System, including individual self-insurers that are granted a license to self-insure after the North Carolina Self-Insurance Security Association annually implements the Association Aggregate Security System, shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims liability per the most

recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the individual self-insurer and the risk retained by the individual self-insurer.

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

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

- (1) Interest-bearing bonds of the United States of America.
- (2) Interest-bearing bonds of the State of North Carolina, or of its cities or counties.
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina that have a maturity of one year or greater.
- (4) Surety bonds in a form acceptable to the Commissioner and issued by a corporate surety. A surety bond deposited pursuant to this subsection shall require that the surety reimburse the Commissioner, or his successors, assigns, or transferees, for any costs incurred in the collection of the proceeds of the surety bond, including reasonable attorneys' fees, and any costs incurred in administering the insolvent self-insurer's workers' compensation claims.
- (4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner. An irrevocable letter of credit deposited pursuant to this subsection shall require that the bank reimburse the Commissioner, or his ~~successor~~, successors, assigns, or transferees for any costs incurred in the collection of the proceeds of the letter of credit, including reasonable attorneys' fees.

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

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

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

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

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

(g) ~~Securities~~ Pursuant to the provisions of this section and with the approval of the Commissioner, deposits held by the Commissioner under this section may be exchanged or replaced by the self insurer with other securities of like nature and amount as long as the self insurer is not in a hazardous financial condition. No release shall be effectuated until replacement securities or bonds of an equal value have been substituted. acceptable forms of deposit in amount determined by the Commissioner. Any surety bond may deposit to be exchanged or replaced with another surety bond that meets the requirements of this section if 90 days' advance written notice is given to the Commissioner. If a self insurer ceases to self insure or desires to replace securities with an acceptable surety bond or bonds, the self insurer shall notify the Commissioner, and may recover all or a portion of the securities deposited with the Commissioner upon posting instead an acceptable special release bond issued by a corporate surety in an amount equal to the total value of the securities. The special release bond shall cover all existing liabilities under the Act plus an amount to cover future loss development and shall remain in force until all obligations under the Act have been discharged fully. another form of deposit shall not be released until the approved replacement deposit is received by the Commissioner.

(h) ~~If a self insurer ceases to self insure, no deposits shall be released by the Commissioner until the self insurer has discharged fully all of the self insurer's obligations under the Act.~~ Any self-insurer that ceases to self-insure, whether by voluntary termination or by revocation of license, shall continue to secure and be liable for its obligations under the Act and shall continue to report to the Commissioner pursuant to G.S. 97-180. Upon the request of the Commissioner, a self-insurer that ceases to self-insure shall submit filings, as prescribed in G.S. 97-180, to determine whether the deposit is sufficient to satisfy those workers' compensation obligations incurred during the period that the self-insurer was licensed as a self-insurer. The Commissioner may require an increase in the deposit amount or may grant a reduction in the deposit amount to ensure that the deposit is sufficient to cover all existing and future obligations incurred by the self-insurer while subject to the provisions of the Act.

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

SECTION 14. G.S. 97-190 reads as rewritten:

"§ 97-190. Excess insurance.

(a) Every self-insurer, as a prerequisite for licensure under this Article, shall maintain specific and aggregate excess loss coverage through an insurance policy. A self-insurer shall maintain limits and retentions commensurate with its risk. A self-insurer's retention shall be the lowest retention suitable for the self-insurer's exposures and level of annual premium. The Commissioner may require different levels, or waive the requirement, of specific and aggregate excess loss coverage consistent with the market availability of excess loss coverage, the self-insurer's claims experience, and the self-insurer's or guarantor's financial condition.

(b) An excess insurance policy required by this section shall be issued by either a ~~licensed~~ an insurance company licensed in this State or an approved-eligible surplus lines insurance company ~~insurer~~ as defined in G.S. 58-21-10 and shall:

- (1) Provide for at least 30 days' written notice of cancellation by registered or certified mail, return receipt requested, to the self-insurer and to the Commissioner.
- (2) Be renewable automatically at its expiration, except upon 30 days' written notice of nonrenewal by certified mail, return receipt requested, to the self-insurer and to the Commissioner.

(c) Every self-insurer shall provide to the Commissioner evidence of coverage and any amendments within 30 days after their effective dates. Every self-insurer shall, at the request of the Commissioner, furnish copies of its excess insurance policies and amendments."

SECTION 15. G.S. 97-195 reads as rewritten:

"§ 97-195. ~~Revocation of license.~~ Revocation, suspension or restriction of license.

(a) ~~The Commissioner summarily may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license summarily, the Commissioner may consider any or all of the following:~~

- ~~(1) Determination of insolvency by a court of competent jurisdiction.~~
- ~~(2) Institution of bankruptcy proceedings.~~

~~(3) If the self insurer is in a hazardous financial condition.~~

~~(a1) The Commissioner may, upon at least 45 days notice and opportunity for a hearing, revoke, suspend, or restrict the license of a self-insurer if any of the following apply:~~

- ~~(1) The self-insurer fails or refuses to comply with any law, order, or rule applicable to the self-insurer.~~
- ~~(2) There is a determination of insolvency by a court of competent jurisdiction.~~
- ~~(3) The self-insurer is in a hazardous financial condition.~~
- ~~(4) The self-insurer has experienced a material loss or deteriorating operating trends, or has reported a deficit financial position.~~
- ~~(5) Any affiliate or subsidiary is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation.~~
- ~~(6) The self-insurer has failed to pay premium taxes pursuant to Article 8B of Chapter 105 of the General Statutes.~~
- ~~(7) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect a self-insurer's solvency.~~
- ~~(8) The management of a self-insurer has failed to respond to the Commissioner's inquiries about the condition of the self-insurer or has furnished false and misleading information in response to an inquiry by the Commissioner.~~
- ~~(9) The management of a self-insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the filed financial information.~~
- ~~(10) The self-insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems.~~
- ~~(11) The self-insurer has failed to make proper and timely payment of claims, as required by this Article.~~
- ~~(12) Failure to pay any North Carolina Self-Insurance Security Association assessments made pursuant to G.S. 97-133.~~
- ~~(13) Failure to participate in the Association Aggregate Security System or, if excluded from participation in the Association Aggregate Security System, failure to provide and maintain the deposit required by G.S. 97-185.~~

~~(b) The Commissioner, upon at least 45 days' notice, may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license under this subsection, the Commissioner may consider any or all of the following:~~

- ~~(1) Whether the self insurer has experienced a material loss or deteriorating operating trends, or reported a deficit financial position.~~

- ~~(2) Whether any affiliate or subsidiary is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation.~~
- ~~(3) Whether the self-insurer has failed to pay premium taxes pursuant to Article 8B of Chapter 105 of the General Statutes.~~
- ~~(4) Repealed by Session Laws 2003-221, s. 15, effective June 19, 2003.~~
- ~~(5) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect a self-insurer's solvency.~~
- ~~(6) Whether the management of a self-insurer has failed to respond to the Commissioner's inquiries about the condition of the self-insurer or has furnished false and misleading information in response to an inquiry by the Commissioner.~~
- ~~(7) Whether the management of a self-insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the filed financial information.~~
- ~~(8) Whether the self-insurer has experienced or will experience in the foreseeable future, cash flow or liquidity problems.~~
- ~~(9) Whether the self-insurer has not complied with the other provisions of this Article or the Act.~~
- ~~(10) Whether the self-insurer has failed to make proper and timely payment of claims as required by this Article.~~

(c) Any self-insurer subject to license ~~revocation~~ revocation, suspension, or restriction under subsection ~~(a) or (b)~~ (a1) of this section may request an administrative hearing before the Commissioner to review that order. If a hearing is requested, a notice of hearing shall be served, and the notice shall state the time and place of hearing and the conduct, condition, or ground on which the Commissioner based the order. Unless mutually agreed upon between the Commissioner and the self-insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be either in Wake County or in some other place designated by the Commissioner. The Commissioner shall hold all hearings under this section privately unless the self-insurer requests a public hearing, in which case the hearing shall be public. The request for a hearing shall not stay the effect of the order."

SECTION 16. Article 5 of Chapter 97 of the General Statutes is amended by adding the following new section:

"§ 97-196. Civil penalties or restitution for violations; administrative procedure.

(a) Whenever the Commissioner has reason to believe that a self-insurer has violated any of the provisions of this Article, and the violation subjects the license of the self-insurer to suspension or revocation, the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.

(b) If the Commissioner finds a violation of this Article, the Commissioner may, in addition to or instead of suspending or revoking the license, order the payment or a

monetary penalty as provided in subsection (c) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (d) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

(c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (b) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(d) Upon petition of the Commissioner, the court may order the self-insurer who committed a violation specified in subsection (b) of this section to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time, and the petition may be made in any appeal of the Commissioner's order.

(e) Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(f) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any self-insurer as to the status of the self-insurer's license or as to any civil penalty or restitution.

(g) Unless otherwise specifically provided for, all administrative proceedings under this Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75."

SECTION 17. G.S. 58-2-161(a)(1)p. reads as rewritten:

"§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.

(a) For the purposes of this section:

(1) "Insurer" has the same meaning as in G.S. 58-1-5(3) and also includes:

...

p. The North Carolina Self-Insurance ~~Guaranty~~—Security Association under Article 4 of Chapter 97 of the General Statutes.

..."

SECTION 18. G.S. 58-30-10(7) reads as rewritten:

"§ 58-30-10. Definitions.

As used in this Article, unless the context clearly indicates otherwise:

...

- (7) "Domestic guaranty association" means the Postassessment Insurance Guaranty Association in Article 48 of this Chapter, as amended; the North Carolina Self-Insurance ~~Guaranty~~Security Association in Article 4 of Chapter 97 of the General Statutes; the Life and Accident and Health Insurance Guaranty Association in Article 62 of this Chapter, as amended; or any other similar entity hereafter created by the General Assembly for the payment of claims of insolvent insurers.

... "

SECTION 19. G.S. 58-47-65(f)(14) reads as rewritten:

"(f) The license application shall comprise the following information:

...

- (14) A letter stipulating the applicant's acceptance of membership in the North Carolina Self-Insurance ~~Guaranty~~Security Association under Article 4 of Chapter 97 of the General Statutes.

... "

SECTION 20. G.S. 105-259(b)(16a) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

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

... "

SECTION 21. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:42 p.m. this 14th day of September, 2005