

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 306
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Short Title: Insurance Amendments/AB.

(Public)

Sponsors:

Referred to:

March 4, 1999

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

1 BUSINESS CESSATION LAW, AND TO AUTHORIZE THE COMMISSIONER
2 TO ADOPT RULES RECOGNIZING NEW ANNUITY MORTALITY TABLES.

3 The General Assembly of North Carolina enacts:

4
5 PART I. HEARINGS AND FAIR AND BEACH PLANS APPEALS.

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

7 "**§ 58-2-50. ~~Examinations~~ Examinations, hearings, and investigations.**

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

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

20 "**§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**
21 **Commissioner to superior court.**

22 Any person or any insurer who may be aggrieved by an act, ruling or decision of the
23 Association other than an act, ruling or decision relating to the cause or amount of a
24 claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the
25 Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the
26 appeal shall be in accordance with ~~the procedure set forth in G.S. 58-2-50; rules adopted by~~
27 the Commissioner: Provided, however, the Commissioner is authorized to appoint a
28 member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of
29 hearing ~~such those~~ appeals and a ruling based upon ~~such the~~ hearing shall have the same
30 effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or
31 decision of the Commissioner may appeal as is provided ~~by the provisions of~~ in G.S. 58-2-
32 75.

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

1 recordings and transcripts, shall be determined by rules adopted by the Commissioner.
2 Each party shall, on a date determined by the Commissioner or ~~his~~the designated hearing
3 officer, but not sooner than 15 days after delivery of the completed transcript to the party,
4 submit to the Commissioner or ~~his~~the designated hearing officer and serve on the other
5 party, a proposed order. The Commissioner or ~~his~~the designated hearing officer shall
6 then issue an order."

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

8 **"§ 58-46-30. Appeals; judicial review.**

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

25 No later than 20 days before each hearing, the appellant shall file with the
26 Commissioner or ~~his~~the designated hearing officer and shall serve on the appellee a
27 written statement of ~~his~~the appellant's case and any evidence ~~he~~that the appellant intends
28 to offer at the hearing. No later than five days before ~~such~~the hearing, the appellee shall
29 file with the Commissioner or ~~his~~the designated hearing officer and shall serve on the
30 appellant a written statement of ~~his~~the appellee's case and any evidence ~~he~~that the
31 appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed.~~
32 ~~The cost of such recording and transcribing shall be borne equally by the appellant and appellee;~~
33 ~~provided that upon any final adjudication the prevailing party shall be reimbursed for his share of~~
34 ~~such costs by the other party.~~The procedures governing recordings of hearings and, if
35 necessary, transcripts of recordings, as well as the fees for copies of recordings and
36 transcripts, shall be determined by rules adopted by the Commissioner. Each party shall,
37 on a date determined by the Commissioner or ~~his~~the designated hearing officer, but not
38 sooner than 15 days after delivery of the completed transcript to the party, submit to the
39 Commissioner or ~~his~~the designated hearing officer and serve on the other party, a
40 proposed order. The Commissioner or ~~his~~the designated hearing officer shall then issue
41 an order."
42

43 **PART II. CONTINUING CARE RETIREMENT RECEIVERSHIPS.**

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

3 **"§ 58-64-46. Receiverships; exception for facility beds.**

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

12
13 **PART III. HANDICAPPED PERSONS.**

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

15 **"§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.**

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

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

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

39
40 **PART IV. WORKERS' COMPENSATION MANAGED CARE.**

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

42 "(a) Nothing in Articles 50 through 55 of this Chapter ~~shall apply~~ applies to or affect
43 affects any policy of liability or workers' compensation insurance, except that the

1 provisions of ~~G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55~~ G.S. 58-50-56(g)
2 and (h) shall apply to policies of workers' compensation insurance and to
3 individual and group self-funded workers' compensation insurance plans. If there is any
4 conflict between managed care provisions of this Chapter and managed care provisions of
5 Chapter 97 of the General Statutes with respect to workers' compensation insurance, the
6 provisions of Chapter 97 govern."

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

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

17 PART V. COMMERCIAL AIRCRAFT INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 insured for loss or damage to another person's property resulting from
2 the ownership, maintenance, or use of commercial aircraft, and (iii) loss,
3 damage, or expense incident to a liability claim."

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

5 "**§ 58-1-5. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **"§ 58-21-35. Duty to file ~~evidence of insurance and affidavits.~~ reports and retain**
 2 **affidavits.**

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

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

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

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

9 ~~c.(3) A description of the subject and location of the risk;~~ risk.

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

11 ~~e. Such other pertinent information as the Commissioner may~~
 12 ~~reasonably require; and~~

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

14 (6) The policy period.

15 (7) The policy number.

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

18 (9) Any other relevant information the Commissioner may reasonably
 19 require.

20 (2) ~~An~~

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

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

28 **"§ 58-21-2. Relationship to other insurance laws.**

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

34 **PART VII. WORKERS' COMPENSATION SELF-INSURANCE.**

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

36 "(16a) To provide the North Carolina Self-Insurance Guaranty Association
 37 information on self-insurers' premiums as determined under G.S. 105-
 38 228.5(b), (b1), and (c) for the purpose of collecting the assessments
 39 authorized in G.S. 97-133(a)."

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

41 **"§ 97-133. Powers and duties of the Association.**

42 (a) The Association shall:

- 1 (1) ~~Obtain from each member self-insurer and file with the Commissioner~~
2 ~~individual reports specifying the aggregate benefits each member paid~~
3 ~~during the previous calendar year, and the annual standard premium that~~
4 ~~would have been paid by the individual member self-insurer during the~~
5 ~~previous calendar year, pursuant to manual rates established by the~~
6 ~~North Carolina Rate Bureau and using the experience rating procedure~~
7 ~~approved by the Commissioner for that member self-insurer or the~~
8 ~~annual premium collected by each group member self-insurer during the~~
9 ~~prior calendar year. These reports shall be due on or before July 15~~
10 ~~following the close of that calendar year, except that this deadline may~~
11 ~~be extended by the Commissioner for up to three additional months for~~
12 ~~good cause shown.~~
- 13 (2) Assess each member of the Association as follows:
- 14 a. Each individual member self-insurer shall be annually assessed
15 an amount equal to one-quarter of one percent (0.25%) of the
16 annual standard premium-gross premiums, as determined under
17 G.S. 105-228.5(b), (b1), and (c), that would have been paid by
18 that member self-insurer for workers' compensation insurance
19 during the prior calendar year; and payment to the Association
20 shall be made no later than September 15 following the close of
21 that calendar year. Where any such assessment is paid based in
22 whole or in part upon estimates of annual standard premium-gross
23 premiums for the prior calendar year, there shall be made in the
24 next year's assessment an adjustment of the assessment of such
25 prior year based on actual audited annual standard premium-gross
26 premiums. Each group member self-insurer shall be annually
27 assessed an amount equal to one-quarter of one percent (0.25%)
28 of the annual premium collected by gross premiums, as
29 determined under G.S. 105-228.5(b), (b1), and (c), of the group
30 member self-insurer during the prior calendar year; and payment
31 to the Association shall be made no later than September 15
32 following the close of that calendar year. Regardless of the size
33 of the Fund, during its first 12 months of membership, no
34 member self-insurer may discount or reduce this one-quarter of
35 one percent (0.25%) assessment. Assessments paid by members
36 pursuant to this subdivision shall be credited toward the tax paid
37 by self-insurers under Article 8B of Chapter 105 of the General
38 Statutes. For the purpose of making the assessments authorized
39 by this subsection and subsections (c) and (d) of this section, the
40 Secretary of Revenue shall provide to the Association the self-
41 insurer premium and payroll information as determined under
42 G.S. 105-228.5(b), (b1), and (c), and the Commissioner shall
43 provide to the Association the group self-insurer premium

1 information reported to the Commissioner under G.S. 58-47-75
2 and G.S. 58-2-165.

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

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

41 The Association may purchase primary excess insurance from an
42 insurer licensed by the Commissioner for the appropriate lines of
43 authority to defray its exposure to loss occasioned by the default of one

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

13 (4) Be obligated to the extent of covered claims occurring prior to the
14 determination of the member self-insurer's insolvency, or occurring
15 after such determination but prior to the obtaining by the self-insurer of
16 workers' compensation insurance as otherwise required under this
17 Chapter. The Association shall pay claims against a self-insurer that are
18 not or have not been paid as a result of a determination of insolvency or
19 the institution of bankruptcy or receivership proceedings that occurred
20 prior to the effective date of this Article.

21 (5) After paying any claim resulting from a self-insurer's insolvency, be
22 subrogated to the rights of the injured employee and dependents and be
23 entitled to enforce liability against the self-insurer by any appropriate
24 action brought in its own name or in the name of the injured employee
25 and dependents;

26 (6) Assess the Fund in an amount necessary to pay only:
27 a. The obligations for the Association under this Article subsequent
28 to an insolvency;
29 b. The expenses of handling covered claims subsequent to an
30 insolvency;
31 c. The cost of examinations under G.S. 97-137; and
32 d. Other expenses authorized by this Article;

33 (7) Investigate claims brought against the Association and adjust,
34 compromise, settle, and pay covered claims to the extent of the
35 Association's obligation; and deny all other claims. The Association
36 may review settlements to which the insolvent self-insurer was a party
37 to determine the extent to which such settlements may be properly
38 contested;

39 (8) Notify such persons as the Commissioner directs under G.S. 97-136;

40 (9) Handle claims through its employees or through one or more self-
41 insurers or other persons designated as servicing facilities. Designation
42 of a servicing facility is subject to the approval of the Commissioner,

1 but designation of a member self-insurer as a servicing facility may be
2 declined by such self-insurer;

3 (10) Reimburse each servicing facility for obligations of the Association paid
4 by the facility and for expenses incurred by the facility while handling
5 claims on behalf of the Association;

6 (11) Pay the other expenses of the Association authorized by this section;
7 and

8 (12) Establish in the Plan a mechanism to calculate the assessments required
9 by subdivisions ~~(1)~~, ~~(2)~~, (2) and (3) of this subsection by a simple and
10 equitable means to convert from policy or fund years that are different
11 from a calendar year.

12 (b) The Association may:

13 (1) Employ or retain such persons as are necessary to handle claims and
14 perform other duties of the Association;

15 (2) Borrow funds necessary to effect the purposes of this Article in accord
16 with the Plan;

17 (3) Sue or be sued;

18 (4) Negotiate and become a party to such contracts as are necessary to carry
19 out the purpose of this section; and

20 (5) Perform such other acts as are necessary or proper to effectuate the
21 purpose of this section.

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

26 (1) Each individual member self-insurer shall be assessed in an amount not
27 to exceed two percent (2%) each year of the annual ~~standard premium~~
28 gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c),
29 that would have been paid by that member self-insurer during the prior
30 calendar year. The assessments of each individual member self-insurer
31 shall be in the proportion that the annual ~~standard premium gross~~
32 premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the
33 individual member self-insurer for the premium calendar year bears to
34 the annual ~~standard premium gross premiums~~ of all individual member
35 self-insurers for the preceding calendar year. For group member self-
36 insurers, the assessment shall not exceed two percent (2%) each year the
37 annual premium collected by that group member self-insurer during the
38 prior calendar year. The assessments of each group member self-insurer
39 shall be in the proportion that the annual ~~collected premium gross~~
40 premiums of the group member self-insurer for the premium calendar
41 year bears to the annual ~~collected premium gross premiums~~ of all group
42 member self-insurers for the preceding calendar year.

- 1 (2) Each member self-insurer shall be notified of the assessment no later
2 than 30 days before it is due.
- 3 (3) The Association may exempt or defer, in whole or in part, the
4 assessment of any member self-insurer, if the assessment would cause
5 that member's financial statement to reflect liabilities in excess of assets.
- 6 (4) Delinquent assessments, except as provided in subdivision (3) of this
7 subsection, shall bear interest at the rate to be established by the Board,
8 but not to exceed the discount rate of the Federal Reserve Bank,
9 Richmond, Virginia, on the due date of the assessment, plus four
10 percent (4%) annually, computed from the due date of the assessment.
- 11 (5) The Association shall establish in the Plan a mechanism to calculate the
12 assessments required by subdivision (1) of this subsection by a simple
13 and equitable means to convert from policy or fund years that are
14 different from a calendar year.
- 15 (d) No individual member self-insurer may be assessed in any calendar year an
16 amount greater than two and one-half percent (2.5%) of the annual ~~standard premium gross~~
17 ~~premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been~~
18 paid by that individual member self-insurer during the prior calendar year. No group
19 member self-insurer may be assessed in any calendar year an amount greater than two
20 and one-half percent (2.5%) of the annual ~~premium collected by gross premiums of~~ that
21 group member self-insurer during the prior calendar year. If the maximum assessment
22 does not provide in any one year an amount sufficient to make all necessary payments,
23 the funds available shall be prorated and the unpaid portion shall be paid as soon
24 thereafter as funds become available. There shall be established in the Plan a mechanism
25 to calculate the assessments required by this section by a simple and equitable means to
26 convert from policy or fund years that are different from a calendar year."
27

28 PART VIII. REPEAL REQUIREMENT OF BIENNIAL REPORT.

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

30 "§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.

31 ~~The Commissioner shall biennially submit to the General Assembly, through the~~
32 ~~Governor, a report of his official acts, including a summary of official rulings and~~
33 ~~regulations.—The Commissioner shall, from time to time, report to the Governor and the~~
34 ~~General Assembly any change or changes which that in his the Commissioner's opinion~~
35 ~~should be made in the laws relating to insurance and other subjects pertaining to his~~
36 ~~department. On or before the first day of February of each year in which the General~~
37 ~~Assembly is in session he shall make to the Governor the recommendations called for in~~
38 ~~this section, to be transmitted to the General Assembly, with the last annual report of this~~
39 ~~Department, including receipts and disbursements. the Department."~~
40

41 PART IX. REPEAL THE AGENCY BUSINESS CESSATION LAW.

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

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

1 "(a) There is no liability on the part of and no cause of action for defamation or
2 invasion of privacy arises against any insurer or its authorized representatives, agents, or
3 employees, or any licensed insurance agent or broker, for any communication or
4 statement made, unless shown to have been made in bad faith with malice, in any of the
5 following:

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

17 **PART X. MORTALITY TABLE AND RESERVES UPDATE.**

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

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

27 **PART XI. EFFECT OF HEADINGS.**

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

32 **PART XII. EFFECTIVE DATE.**

33 Section 12. Sections 2 through 11 of this act become effective October 1,
34 1999. The remainder of this act is effective when it becomes law, but Sections 1.1, 1.2,
35 and 1.3 of this act shall not apply to appeals pending on the date this act becomes law.